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ELECTION COMMISSION, INDIA

NOTIFICATION

New Delhi, the 21st April 1956

S.R.O. 1123.—Whereas the election of Dr. V. K. John, Advocate, Andhra Insurance Buildings, No. 337, Thambu Chetty Street, Madras and Dr. A. Srinivasan, Honorary Physician, General Hospital, 22-A, Cathedral Road, Madras, as Members of the Legislative Council of the State of Madras, from the Madras Graduates' constituency of that Council, has been called in question by an election petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri G. Vasantha Pai, Advocate, Room No. 21, Third Floor, Andhra Insurance Buildings, No. 337, Thambu Chetty Street Madras;

And whereas, the Election Tribunal appointed by the Election Commission, in pursuance of the provisions of section 86 of the said Act, for the trial of the said election petition has, in pursuance of the provisions contained in section 103, of the said Act, sent a copy of its Order to the Commission;

Now, therefore, in pursuance of the provisions of section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

IN THE COURT OF THE ELECTION TRIBUNAL, MADRAS.

PRESENT:

1. Sri N. Krishnaswami Ayyangar—*Chairman.*
2. Sri M. Kanna Babu—Judicial *Member.*
3. A. Bhujanga Rao—Advocate *Member.*

Monday, the 16th day of April, 1956

ELECTION PETITION No. 28 OF 1954

G. Vasantha Pai—*Petitioner.*

Versus

1. Dr. V. K. John.
2. Dr. A. Srinivasan
3. Dr. M. Santhosham—*Respondents.*

Petition under Sections 80, 81, 100 and 101 of the Representation of People Act (Act XLIII of 1951), praying for the reasons stated therein the Tribunal may be pleased to pass an order (a) declaring the election to be wholly void, (b) declaring the election of both the returned candidates as void, (c) giving a finding that the 1st respondent has been guilty of the corrupt practices specified in para. 8, 9(a) and 11 and illegal practice specified in para. 12, of the petition, and the 2nd respondent has been guilty of the corrupt practices specified in paras. 8 and 11 of the petition and (d) for costs of this petition.

This petition coming on for final hearing on the 23rd, 24th, 26th, 27th, 28th and 31st days of March, 1956, in the presence of Sri T. Krishna Rao and Sri A. Narayana Pai, Advocates for the petitioner, of Mr. K. Krishnaswami Ayyangar, Advocate for the 1st respondent, of Mr. V. P. Raman, Advocate for the 2nd respondent, and of Mr. M. G. Kamath, Advocate for the 3rd respondent, and having stood over to this day for consideration, the Court made the following.

ORDER

For convenience, the parties will be referred to by their description in the Election petition and the Representation of the People Act, 1951, briefly as the Act.

2. The facts leading to the petition are these. In March-April, 1954, there was a bye-election for two seats to the Madras Legislative Council from the Graduates' Constituency. The petitioner and the three respondents were the rival candidates. Nominations had to be filed on or before 1st March, 1954; their scruity was made by the Collector of Madras on 5th March, 1954; the election was by postal ballot; the date of the poll was 8th April, 1954, and the counting took place on 9th April, 1954. Respondents 1 and 2 were declared elected and this result was published in the Fort St. George Gazette on 12th April, 1954. The last date for lodging the return of election expenses was 27th May, 1954, and this petition was filed on 21st July, 1954, before the Election Commission by one of the defeated candidates.

3. Paragraph 18 of the petition asks for three reliefs:

(a) for declaring the election to be wholly void;

(b) for declaring the election of both the returned candidates as void;

(c) for giving a finding that the 1st respondent has been guilty of the corrupt practices specified in paragraphs 8, 9(a) and 11 and the illegal practice specified in paragraph 12, of the petition, and that the 2nd respondent has been guilty of the corrupt practices specified in paragraphs 8 and 11 of the petition; and

(d) for costs of the petition.

3(a). The grounds urged are these: (i) The election was to be held in accordance with the system of proportional representation by means of the single transferable vote. Hence, if the election of any one of the returned candidates is found to be void, it affects the election as a whole (para 4).

(ii) Respondents 1 and 2 are subject to disqualifications as they were holding offices of profit under the Government or the Corporation of Madras (in which the Government of Madras has a financial interest) and hence their election is invalid (paragraphs 5 to 7).

(iii) The election was not a free one by reason of undue influence having prevailed at it and intimidation having been resorted to by the respondents 1 and 2 and their agents by calling upon the electorate to vote for any candidate other than the petitioner, falsely alleging that the petitioner was a communist. They had been carrying on this malicious propaganda which, to their knowledge, was absolutely false. It was an attack also on his conduct as he had styled and declared himself in his election-manifesto and before the Returning Officer that he was an independent non-party candidate. It was calculated to interfere with the freedom of choice of the electorate of whom many were Government officers or servants and several others, who may have had distinct anti-communist leanings or views. For this reason, the election is wholly void. It also amounts to a major corrupt practice under Section 123(5), of the Act. Particulars in respect of this are given in Schedule A (para 8).

(iv) The 1st respondent was actively helped by the postal service in diverse ways for the furtherance of his election and the particulars are given in Schedule B(1) to B(3). The petitioner understands that, in several places in the city, the agents of the respondents followed the postmen with a view to take the ballot papers from the concerned voters when deliveries were being effected and this

practice has an element of undue influence in as much as it leaves the voter little time to make up his mind and makes him to part with the vote to the first man who approaches him. Particulars are given in Schedule B(4). This amounts also to a major corrupt practice under Section 123(8) of the Act. (Paras 9 and 10).

(v) Both the returned candidates incurred or authorised expenditure in excess of the prescribed limit under the Act, and consequently committed a major corrupt practice under Section 123(7), of the Act. Even if the total amount expended or authorised should be found not to have exceeded the prescribed maximum, they will be guilty of a minor corrupt practice under Section 124(4), of the Act. Particulars are given in Schedule C (Para 11).

(vi) The 1st respondent is guilty of an illegal practice under Section 125(3), of the Act, and the particulars are given in Schedule D (Para 12).

(vii) The Returning Officer did not observe proper procedure both at the scrutiny of the nominations and at the counting of votes by not giving the candidates an opportunity to verify the correctness of the rejection or acceptance of the ballot papers etc. and this invalidates the election and the entire proceedings (Para 13).

4. The 3rd respondent no doubt files a written statement but he generally supports the petitioner.

4 (a). Respondents 1 and 2 file written statements, but at this stage, it is sufficient to state that they deny the truth of the allegations made against them. As and when each point is taken up, their contentions will be dealt with in detail.

5. Several interlocutory applications have been filed, but it is necessary to refer only to four of them. I.A. No. 7, was filed by the 1st respondent to direct the petitioner to choose any one of the reliefs he sought and strike off the others along with the allegations in support thereof. I.A. No. 8, was filed by the 2nd respondent to direct the petitioner to strike out his prayers (b) and (c) and also the allegations in support thereof. I.A. No. 11, was filed by the 1st respondent to dismiss the petition *in limine* for want of the full particulars required under Sections 83(1) and (2), of the Act, and to try in advance two questions of law, *viz.*, (1) whether calling the petitioner a communist is a corrupt practice under Sections 123(5) and (2), whether in the absence of any allegation that the result of the election has been materially affected, the charges under Sections 124(4) and 125(3), and the charge of non-compliance of the rules by the Returning Officer should not be struck off and whether the Tribunal has jurisdiction to try them. I.A. No. 12, was filed by the 2nd respondent for identical reliefs. I.A. Nos. 7 and 8 were dismissed by the Tribunal on 1st November, 1954, and I.A. Nos. 11 and 12 were allowed in part and dismissed in part on 15th November, 1954. Writ Petitions Nos. 719 and 723, were filed against the orders on I.A. No. 7 and 8, while writ Petitions Nos. 730 and 737, were filed against the orders on I.A. Nos. 11 and 12. All these writ petitions were disposed of by the judgment of the High Court dated 11th January, 1955. In Writ Petitions Nos. 719 and 723, two points were taken: (1) that the petitioner can claim only one relief and not all cumulatively under the Act, and (2) that, on a proper construction of Rule 119 of the rules framed under the Act, the petition is barred by limitation. These were decided against the respondents and the two writ petitions were dismissed with costs. In Writ Petitions Nos. 730 and 737, the respondents raised three points. The first is in relation to the charge that calling a person a communist amounted to a corrupt practice under Section 123(5); the second is that the Tribunal was wrong in holding that the particulars in Schedule A were sufficient; and the third is that the Tribunal is wrong in holding that the particulars in Schedule B are sufficient. The order of the High Court was that the Tribunal should restore I.A. Nos. 11 and 12 to file and dispose of according to law and in the light of the observations contained in its order. two questions, viz., (1) whether calling the petitioner (Shri G. Vasantha Pai), a communist amounts to a major corrupt practice under Section 123(5), of the Act, dealing with this question (if it thinks fit), as a preliminary point and (2) whether the terms of Section 100(1)(b), of the Act are satisfied by the allegations in the election petition read with the schedules and that, in other respects, the Tribunal's order do stand confirmed and these writ petitions be dismissed and that each party do bear its costs. The respondents filed Writ Appeals Nos. 25 and 26 against the orders on Writ Petitions Nos. 723, and 719, and raised the same two points viz., the maintainability of the petition on the ground that more than one relief was sought and the bar of limitation under Rule 119 in so far as it prayed for the relief of having the election of the returned candidate set aside. The two appeals were

disposed of on 23rd April, 1955. The objection relating to the maintainability was decided against the respondents, but the plea of limitation was decided in their favour and a Writ of Prohibition was issued to the Tribunal prohibiting it from proceeding with the trial of the Election petition so far as the relief (b) in paragraph 18 of the petition is concerned. The appeals were otherwise dismissed. There was no appeal by the respondents in respect of I.A. Nos. 11 and 12 and the Writ Petitions Nos. 730 and 737.

In pursuance of the order on the Writ Petitions Nos. 730 and 737, I.A. Nos. 11 and 12, were restored to file and the parties were heard. By its order dated 3rd June,, 1955, the Tribunal considered that the particulars were inadequate and directed the petitioner to specify fully and clearly the particulars of the allegation of coercion or intimidation and the case which the respondents have to meet before 11th June, 1955, and to furnish within the same time a copy thereof to each of the respondents. The respondents were directed to file their rejoinder before 15th June, 1955. As regards the preliminary issue, the Tribunal felt that an admission by the 2nd respondent similar to the one made by the 1st respondent before the High Court was necessary and gave time for making it. The parties also raised the question of the effect of the Writ of Prohibition on the proceedings before the Tribunal and an issue (No. 11. additional issue) was framed. On this issue, the parties were heard and the Tribunal made an order on 21st June, 1955. By this order, the Tribunal held that it was afraid it would be reading too much into the Writ of Prohibition anything by implication and extending it to the finding sought as relief (c), and further held that it was not necessary at that stage to consider the question whether calling a candidate a communist amounts to a major corrupt practice as a preliminary point. Against this order, the 1st respondent filed Writ Petitions Nos. 478 and 479, and the 2nd respondent filed Writ Petition No. 476. In the main, three questions were argued therein: (1) By reason of the decree given in the writ appeals, the Tribunal was wrong in taking the view that it could investigate matters which were relevant to prayers (a) and (c) in paragraph 18, of the petition when such matters were relevant to prayer (b); (2) The Tribunal was wrong in refusing to decide as a preliminary point the question whether calling a candidate a communist would amount to a corrupt practice or not; and (3) The Tribunal was wrong in permitting the petitioner to furnish further particulars. The three points were decided against the respondents and the writ petitions were dismissed with costs on 18th November, 1955.

6. The following are the issues re-cast on 3rd June, 1955:—

(1) Did respondents 1 and 2 or either of them hold an office of profit as stated in paragraphs 5 and 6 of the petition and are they subject to the disqualification under Section 7(e) of the Representation of the People Act or Article 191 of the Constitution?

(2) Was the acceptance of the nomination papers of respondents 1 and 2 by the Returning Officer improper and did such acceptance materially affect the result of the election?

(3) Is the petition barred by limitation?

(4) Is the petition liable to be dismissed for non-compliance with Section 83(1), and (2) of the Representation of the People Act?

(5) Is the election liable to be set aside because of undue influence, intimidation and false representations as stated in paragraph 8, of the petition?

(6) Did the respondents commit a major corrupt practice under Section 123(5), of the Act, by calling the petitioner a communist and carry on propaganda to that effect?

(7) Did respondents 1 and 2, commit the corrupt practices under Section 123(7), and 124(4), of the Representation of the People Act?

(8) Is the 1st respondent guilty of illegal practice under Section 125(3), of the Act by the publication of pamphlets without printer's name?

(8-a) Was there any corrupt practice by respondent No 1 under Section 123(8)?

(9) Is the 2nd respondent guilty of a major corrupt practice in having procured the assistance of the Assistant Government Pleader, Madras, as his scrutiny agent, at the time of the nominations?

(10) Was there any illegality in the matter of counting of votes and, what, if any, is its effect on the validity of the whole election by reason of the doctrine of proportionate representation?

Additional Issue:

(11) Whether, in view of the writ of prohibition in the Writ Appeals Nos. 25 and 26 of 1955, the petitioner can claim to rely on the grounds relating to the validity of the election of respondents 1 and 2, for the declaration sought in paragraph 18(a) of the petition that the election is wholly void and for the finding sought in paragraph 18(c) of the petition?

(12) Are all or any of the parties entitled to any and what relief?

7. Of the above twelve issues, four were already disposed of (Nos. 2 and 11 by the Tribunal's orders dated 24th February, 1956 and 21st June, 1955, respectively and Nos. 3 and 4 by the judgments of the High Court dated 29th April, 1955 and 18th November, 1955 respectively); two (Nos. 1 and 10), are hit by the High Court's writ of prohibition dated 29th April, 1955; and one (No 9) was raised at the instance of the 3rd respondent, but he did not adduce any evidence and did not also press it. Further, the petitioner himself did not allege it as a charge in his petition. There remain six (Nos. 5 to 8-a and 12) now for consideration and both sides have agreed that it is so. We proceed to take them up for consideration.

8. *Issues* 5 *and* 6.—It will be necessary and convenient to consider the two issues together; for, in para. 8, of his petition, petitioner alleges that the respondents 1 and 2, and their agents carried on a false and malicious propaganda that he was a communist and called upon the electorate to vote for any candidate other than him. This false propaganda (false also to their knowledge) had a two-fold consequence. The first is that, by reason of it, "undue influence" and "intimidation" prevailed at the election. It was calculated to interfere with the freedom of choice of the electorate of whom many were Government officers or servants and several others who may have had distinct anti-communist leanings or views. For this reason, the election was not a free one and is wholly void, under Section 100(1) of the Act. The second is that it was an attack also on his conduct inasmuch as he had styled himself and declared, in his election mainfesto and before the Returning Officer, that he was an independent and non-party candidate and that therefore it amounts to a major corrupt practice under Section 123(5), of the Act. Issue 5 relates to the first and issue 6 to the second and the foundation of fact for both is the truth of the propaganda as alleged.

8(a) The particulars of the alleged propaganda are given in Schedule A. The first column for date gives the period as 13th March, 1954 to 22nd March, 1954. The second mentions seven places where the propaganda was carried on by the agents of the 1st respondent (1) Mangalore, (2) Kasargod, (3) Tirunelveli, (4) Salem (5), Tellichery, (6) Coimbatore and (7) Madras city where the 1st respondent and his agents spread it among the Government and other officers. The third column gives the names of the agents. It is now unnecessary to be more elaborate as they will be dealt with later. As regards the 2nd respondent, the period of time is the same, but the place is only Madras city, at the Cosmopolitan Club, Government institutions and offices and commercial firms Union Co. Ltd., and S.V.O.C.

8(b). Paras 11 to 18 of the written statement of the 1st respondent deal with this matter. Broadly stated, the truth of the propaganda by him or his agents or both is denied. Complaint is made that full particulars are not given and that particulars given are incorrect and untrue. Lastly, it is stated "that if any impression was given to anybody in any place that the petitioner was associated with communists, the petitioner himself is responsible, as he was enthusiastically and openly helped in the election in Madras city by well-known communists" (para 15). Undue influence and intimidation and the consequent want of freedom at the election are also denied and it is contended that the election is not wholly void. Paras 16 to 18 say that the propaganda, even if assumed to be true, does not amount to a corrupt practice under Sec. 123(5), as it has no relation to personal character and conduct, to which alone that section applies. Paras 10 to 13 of the written statement of the 2nd respondent raise contentions substantially the same as those of the 1st respondent and hence need not be repeated. In para 12, he too says that he was credibly informed that the petitioner was supported by leading members of the communist organisation in South India and that, if at any place the petitioner's interests suffered by reason of the creation of any such belief in the mind of the voters, it was entirely due to the activities of the petitioner himself and his agents.

8(c). In the further particulars furnished on 18-11-1954, the petitioner gives a new item, *viz.*, that the 2nd respondent told Mr. S. Govind Swaminathan

(P.W. 1) that he (petitioner) is a communist. In his I.A. 13 of 1954 filed on 10-11-1954, the petitioner mentions two new items. No 25 is that the 1st respondent addressed his workers at a gathering in his house immediately prior to the despatch of the ballot papers and desired that the second votes be given to the 2nd respondent and not to the petitioner who was a communist. Nos. 26 and 27 relate to two meetings of the petitioner and the 1st respondent at the office of Messrs. Row & Reddi, the first on the day next after the workers' gathering and the second on 19-3-1954. The petitioner's contention is that the replies and remarks of the 1st respondent at these two meetings practically amount to an admission of the truth of the propaganda. While disputing the tenability of the petition, the 1st respondent denied certain other allegations therein (*vide* para 4), but made no reference in his counter-affidavit to these items. In the still later further particulars filed on 11-6-1955, the petitioner explained the nature, in this case, of the "coercion and intimidation" mentioned in Sec. 100(1)(b) of the Act and the 1st respondent controverted it in his rejoinder, dated 21-6-1955.

9. Three points arise for decision (1) Whether the alleged false propaganda by the respondents and their agents is satisfactorily proved? (2) Whether, even if so proved, it is sufficient to hold that the election is wholly void under Sec. 100(1) or (3) to find the major corrupt practice under Sec. 123(5) of the Act?

10. *Burden of proof.*—Relying on *Krishnaji Bhim Row* v. *Shankar Santharam* [7 E.L.R. 100 (106)] and *Dr. K. N. Gairola* v. *Gangadhar Maithani* [8 E.L.R: 105 (115)], the respondents I and 2 contend that an election petition is in the nature of a criminal or quasi-criminal proceeding, that "the burden of proof is on the petitioner and that burden never shifts. Further that the standard of this burden is as in a criminal case and the proof required is beyond any reasonable doubt. Further, that the benefit of doubt will go to the respondent". It is also laid down that no suspicion, however strong, can replace proof. On the other hand, the petitioner points out that under Sec. 90(2) of the Act, every election petition shall be tried, as nearly as may be, in accordance with the procedure applicable under the Code of Civil Procedure to the trial of suits, and also relies on *V. K. Satyavadi* v. *State of Punjab* (1956 S.C. 138). The observation at page 141 of this decision was made while comparing the proceedings before the Returning Officer with those before the Election Tribunal and do not touch the law relating to burden of proof. The decisions relied on by the respondents amply support the principle contended for by them and we have followed that principle. Wherever we held against the respondents. we have done so practically on their admissions.

11. Both sides stated that there was an impression in the mind of the electorate that the petitioner was or must be a communist, or at least had communist leanings. That indeed should be the consequence of the propaganda alleged by him and the impression as a fact must be true. There is no need for any inference in this regard; for there is evidence of the impression on both sides. P.W. 18 (Mr. Adiga) and R. W. 3 (Mr. L. C. Pais) deposed to its existence and they belong to Mangalore in South Kanara where, so far as the Mofussil is concerned, the petitioner says he concentrated his attention in respect of the election campaign. The two sides, however, differ as regards the cause of the impression. The petitioner asserts it was entirely due to the false propaganda by the respondents 1 and 2 and their agents while they, denying it, seek to explain that it must be due to the fact that the supporters of the petitioner are well-known and leading communists. The onus of proof is on the petitioner and let us examine if he has satisfactorily discharged it. In doing so, we should deal with the charges against the two respondents separately.

12. First let us examine the evidence relating to the propaganda generally. Under this head, come P.Ws. 2, 3, 6 and 10. P.W. 2 (Mr. Rama Warrier, advocate) helped the petitioner in the election and he deposes that, when he went to collect the ballot papers, he found that the voters seemed to have got the impression that the petitioner was not a desirable man and that they said it was stated by *some* people that he was a communist. In his cross-examination, he admits that he got that *impression* from what the Government Officers told him. P.W. 2 and P.W. 10 (his uncle and senior Mr. Krishna Warrier) speak of a letter from one Mr. Koman Nair of Tellicherry—the agent of a client of P.W. 10—which said that the agents of other candidates were giving out that the petitioner was a communist. As Mr. Koman Nair is not examined and the letter is not produced, its contents are not evidence and further, they are vague and unhelpful. P.W. 3 (Mr. G. K. Govinda Bhat) advocate then at Mangalore,

deposes that P.W. 18 (Mr. Adiga) told him in the Bar Room that the petitioner was communist "thara" (in the vernacular meaning "pro-communist"). In the cross-examination of P.W. 18, the 1st respondent elicited that he did not tell any one in the Bar room that the petitioner is a communist. When he was asked specifically about P.W. 3, he said he does not remember having told him that the petitioner was pro-communist. It is urged on behalf of the petitioner that P.W. 18 speaks two years after the incident and that he was also sought after by the 1st respondent. P.W. 18's evidence lends colour to the latter part of the contention but as the petitioner did not treat him as hostile, it must be said that his evidence contradicts that of P.W. 3. P.W. 6 (Mr. J. S. Prabhu) is the Manager of the Sugar Department of M/s. Parry & Co. at Madras. He deposes that, when once he went to the Y.M.C.A. during the election days (April 1954), he heard *some persons* talking about the election and *someone* saying that the *petitioner had the support of the communists.* He is one of the three informants of the petitioner about the propaganda in the city, and the only one examined. The result is that the evidence of P.Ws. 2 and 10 is vague and does not help the petitioner, that of P.W. 3 is contradicted by P.W. 18 and that of P.W. 6 supports the cause suggested by respondents 1 and 2 for the impression in the minds of the voters.

13. Next, let us take up the case against the 1st respondent. At the very outset, we may notice that, except for the solitary exception of P.W. 4 (Mr. Ramachandran, advocate), there is no direct evidence, meaning thereby the evidence of a voter to whom the false statement or false propaganda was made. P.W. 4 deposes that one Mr. Krishnamurthi met him (P.W. 4) twice at his house, that at the first visit he asked him to vote for the 1st respondent and that he refused and that at the second visit two weeks later, he (Mr. Krishnamurthi) asked P.W. 4 not to vote for the petitioner as he was a communist. The 1st respondent did not examine Mr. Krishnamurthi but contends that, in spite of it, the evidence of P.W. 4 cannot be accepted. It is urged that P.W. 4 is himself a staunch communist and actively supported the petitioner and further that his relations with the 1st respondent are hostile as the latter declined to take him as his junior. It is also pointed out that it is highly improbable that a worker for the 1st respondent should go to an active worker of a rival candidate and canvass for his vote. Next, it is argued that P.W. 4 would not have failed to report this incident to the petitioner and that yet, the latter does not mention him as one of his informants. Though it is not possible to accept all these contentions and to their full extent, we are of opinion that we cannot act upon this sole incident. In the result, we may say that there is no direct evidence.

14. The petitioner, however, relies on what he or his workers or friends gathered from the voters or the workers of the 1st respondent. Under this head, we have to examine the evidence of P.Ws. 4, 7, 11, 15 and 17. P.W. 4 is a partner in M/s. Row & Reddi. He deposes that in February or March 1954 he went to Salem for a civil appeal, that he asked two advocate friends (M/s. Muhammad Sheriff and Mari Chetti) to vote for the petitioner and that they told him that they heard from R.W. 1 (Mr. Sundaram), a film-producer of that place working for the 1st respondent that the petitioner was a communist. R.W. 1 denies it and says that he did not even know the two advocates. It is urged on behalf of the 1st respondent that P.W. 4's evidence is unreliable. We need not go to that length as his evidence was taken subject to the examination of M/s. Muhammad Sheriff and Mari Chetti and they have not been examined. It will then be mere hearsay and not evidence. P.W. 7 (Mr. V. Sethuraman) is an advocate at Madras. He and the petitioner were classmates and good friends. He is a voter himself and he also tried to help the petitioner in the election. He knew some voters in the Income-tax Office and Madras Electricity Office and took the petitioner there more than once. He deposes that, when he took him the second time shortly before the receipt of the ballot papers, *some* of the voters told him in reply to his query that *those working for Dr. John* had told them that the petitioner was a communist. But he admits that they did not tell and he did not enquire about the names of those informants. His evidence is too vague to support the petitioner's case. P.W. 11 (Mr. Kannan) is an advocate at Salem. He says that, in about March 1954, R.W. 1 and one Mr. K. Srinivasan, another advocate of Salem working for the 1st respondent, came to his house and in the course of conversation said "Why should the communist party put him up as an independent candidate while he is really a Communist?" Obviously, the reference is to the petitioner and P.W. 11 says he denied it. Further he deposes that he made the same statement in the Bar Association and that he again protested. R.W. 1 denies the whole story. He says he did not know P.W. 11 or even where the Bar Association was. He knows

Mr. K. N. Srinivasan, but says that he (Mr. Srinivasan) was not working for the 1st respondent. R.W. 2 (1st respondent) also deposes that he does not know Mr. Srinivasan. We may notice that the petitioner did not mention Mr. Srinivasan's name either in Sch. A or his I.A. 13 of 54. Next, P.W. 11 is not a voter and it is questioned whether anyone would go to a person who is not a voter, particularly to his house. Again, P.W. 11 admits that he did not inform the petitioner of this propaganda though it struck him that he should. He explains that he did not care to write as he was not interested in the result and also says that he ignored the statements by R.W. 1 and Mr. Srinivasan. It is also elicited that summons were served on him a day before his evidence when he came here on some other work, but he adds that he was summoned even before This is a small circumstance but viewing his evidence as a whole, we are not impressed by it. P.W. 15 (Mr. D. P. Pai) completed his law apprenticeship in January, 1954 and went to Mangalore. While there, he worked for the petitioner in the election in the whole of South Kanara District and the northernmost part of Malabar in the early stages. He did not then see anyone working for the 1st respondent except one Mr. Verghese a part-time lecturer in St. Aloysius College. He is different from the other Mr. Verghese, nephew of the 1st respondent. He came to know that R.W. 3 was working for the 1st respondent only at about 11-3-1954, but R.W. 3 says that he did nothing before the afternoon of 13-3-1954. P.W. 15 did not know or hear about the propoganda till 13-3-1954. On that date, he received a telegram [Ex. A-30(d)] from the petitioner that ballot papers were to be expected at Mangalore and went to the voters to collect them. He deposes about four incidents during this round. The first is the information he received from Mr. Kerala Varma, one of the English professors. This was objected to as hearsay even in evidence and it is so. The second is his visit to one Mr. Lakshminarayana. Mr. Lakshminarayana told him that he would not vote for a communist and that he had already parted with his ballot paper. Pointing to a person sitting nearby and saying that he is the 1st respondent's agent, he asked P.W. 15 if he knew him. As P.W. 15 was about to leave, that person introduced himself as Mr. Verghese, the 1st respondent's nephew and said that his uncle told him that the petitioner is a communist. Then Mr. Lakshminarayana also said that Mr. Verghese had told him likewise. The third is that P.W. 3 who had promised his first vote refused to vote for the petitioner saying that the 1st respondent's people had told him that the petitioner is a communist. This is also hearsay and further, P.W. 3 deposed that he consulted only P.W. 18 and no one else. P.W. 18 does not remember if he told P.W. 3 but yet did not speak of any of the 1st respondent's people. The fourth and last is his visit to Mr. Kythan Lobo, along with another advocate Mr. Srinivasa Rao. There, two ladies (Mrs. Pinto and Mrs. Lora Pais) were talking to Mrs. Lobo. Mr. Lobo said those two ladies were working for the 1st respondent and that Mrs. Lobo had already given her ballot paper to them. Regarding his own, he said he would not vote for the petitioner, a communist. P.W. 15 and Srinivasa Rao denied it and asked for at least the second vote. Mr. Lobo asked the two ladies what they had to say to that. P.W. 15 requested the two ladies to refrain from such propaganda. At the auguments, the learned advocate for the petitioner rightly referred only to this incident and the second one above, observing that the witness knew only them personally. P.W. 15 wrote several letters (Exs. A-22 series and B-4 series) to the petitioner but particular reference is made to the post card Ex. A. 22, dated 16-3-1954 and the letter Ex. A-22(a), dated 20-3-1954 said to have been sent and received in the envelope Ex. A-22(b). The comment on behalf of the 1st respondent is that the petitioner did not give full and clear particulars, that in the guise of giving further particulars (whenever he was directed to do so) he added new items and thereby developed his case from stage to stage, that his evidence is self-contradictory and is also contradicted by that on his own behalf and that support is sought from even "fabricated evidence". This last part relates to Exs. A-22(a) and A-22(b). His theory first was that Ex. A-22(a) could not have been the letter sent in Ex. A-22(b). The suggestion was that the letter that may have been actually received in Ex. A-22(b) must have been found to be unhelpful and that, therefore, another letter was subsequently got up and put up as the one actually received. Later, however, he said other defects were discovered and applied for the examination of a handwriting expert and for other reliefs. The latter were negatived and thinking there may be something about the identity of the handwritings, he was permitted to examine a handwriting expert, but not the one he mentioned in his petition as it was admitted that he had already come to an adverse decision. He examined another expert (R.W. 4) but did not ask him anything about the identity of the handwritings. The petitioner's learned advocate contended that Sec. 45 of the Indian Evidence Act (even if it applies to trials before Election Tribunals, for he maintained it does

not) can only apply where identity of handwriting is in question and that R.W. 4's opinion—evidence about certain other matters is wholly inadmissible, and is in fact no evidence at all. Nothing contra is said and in our opinion, the terms of the section support the contention. We cannot rely on R.W. 4's statements. On their strength, the 1st respondent raised a fresh theory that both the letter and the envelope are spurious. It is said that an envelope addressed to another (probably to Mr. V. G. Row, P.W. 12, Barrister-at-law) was used by erasing his address and overwriting that of the petitioner. As any one could, we examined Ex. A-22(b) but found no material to support the theory. P.W. 17 (petitioner) admits that he had these letters with him when he prepared his petition and schedules but says he does not remember if he showed it to his lawyer. His cross-examination (pages 32 and 33) discloses some omissions from and additions to Ex. A-22(a) in Sch. A. The latter do not matter; for, they may be from other sources, and in fact he speaks of other sources, though oral. His explanation regarding the former is not sometimes supportable and the value of his evidence may be suitably discounted. But to describe these two exhibits as "fabricated", we consider, is going rather too far. Probably, the inconsistencies may be said to point rather the other way; for, if farbricated, the petitioner and P.W. 15 are clever enough to do it consistently with Sch. A and would have done so. After all, the contents of Exs. A-22 and A-22(a) are the previous statements of P.W. 15 and it is not explained how the previous and corroborative statements of a witness is evidence, through the opposite party can use them in cross-examination to contradict him. We are also not satisfied that those statements are proved to satisfaction. P.W. 17 is the petitioner. He did not go to the musfassal, in regard to which he depended entirely on information, oral or written, received by him or his friends and communicated by them to him. He was cross-examined in detail about the particulars in Sch. A (*vide* the last two paras on page 31 and the whole of pages 32, 33 and 34). It is unnecessary to extract here all the points elicited on behalf of the 1st respondent and it is sufficient to say that his evidence is not satisfactory regarding several of the particulars and their sources and proof of both. There is no evidence at all in respect of Kasargod, Tirunelveli, Coimbatore and Tellicherry, four of the six places in the mufassal mentioned in Sch. A. Regarding Kasargod, there are two letters—Exs. B-6 and B-15 both dated 3rd April, 1954 by one Mr. A. S. Kamath, the former to the petitioner's advocate and the latter to the 1st respondent. These letters disclose that many voters at Kasargod voted for the petitioner though some of them chose to send their ballot papers directly by post and that, at the last moment, a representative of M/S. Binney & Co., Madras made a sudden visit, contacted a few voters along with some Muhammadan cloth merchants and secured 20 second votes for the 2nd respondent. Mr. Kamath first represented the petitioner as stated in Ex. B-15. Besides there being no oral evidence, these letters disclose that the alleged false propaganda could not have been true in Kasargod. In regard to Tellicherry, there is no proof who Mr. Easwaran mentioned against it in Sch. A. is. P.W. 17 says that his name was mentioned in Koman Nair's letter to P.W. 10, but as mentioned above, that letter is not produced nor is Koman Nair examined. It it needless to pursue the matter further.

15. Coming to Madras city, the petitioner says in para 1 of his further particulars filed on 18th November 1954 that, so far as his knowledge goes, M/S. Krishnamurthi and Mani, both workers of the 1st respondent, have been calling him a communist and that he or his friends were told about it by P.W. 6 and two others (not examined). To the same effect is his evidence. It was already noticed that P.W. 6 deposed that *some* one said in the Y.M.C.A. that the petitioner had the *support* of the communists and not that he is a communist. Coming to the petitioner's personal knowledge, schedule A says that the 1st respondent and his agents in the city spread the propaganda amongst the Government and other officials contradistinguished from Government offices and institutions mentioned against the 2nd respondent and he admits this distinction also in his evidence. In para 1 of his further particulars dated 18th November 1954, he mentiones just one instance in the Income-tax Appellate Tribunal where one member of it asked him whether he was a communist and he replied that it was not true and that it was an election stunt of the 1st respondent. Thus, it was the petitioner who raised the name of the 1st respondent and not the member. In the same paragraph, he says that he was likewise asked by voters in the railway offices but this is a new disclosure and further he does not mention the names of any such voters nor has he examined them. As regards other officers who might have said so, he admits he cannot say who in particular mentioned to him and adds that it is impossible for him to examine any of them as his witnesses. He and P.W. 7 say that they went to the Income-tax Office and the Madras Electricity Office; and that some of the voters told them that he was a communist

and that they cannot vote for him. The evidence of P.W. 7 was already noticed and it was said that it was too vague to support the petitioner's case. It follows that his personal knowledge also does not satisfactorily establish the propaganda by the 1st respondent or his agents in the city.

16. Next, we have to consider the evidence relating to two meetings of the petitioner and the 1st respondent at or near the entrance of the office of M/S., Row & Reddi and the inferences, if any, that can be drawn from their conversation at them. The offices of M/S. Row & Reddi, the 1st respondent and the petitioner are located on the ground, first and second floors of the Andhra Insurance Buildings. An electric lift serves the tenants of the upper floors and it is located near the office of M/S. Row & Reddi. When the petitioner arrives before the lift commences to serve and even at other times, he sits in M/S. Row & Reddi Office. He alleges that he and the 1st respondent thus met twice at or near this office on the way to their own. It has been already noticed that the petitioner did not mention these two meetings either in Sch. A or the further particulars filed on 18th November 1954 and that he disclosed them as items 26 to 28 in his I.A 13 of 54 dated 10th November 1954 and required the 1st respondent to admit them. It is also noticed that, though the latter admitted or denied other items, he made no reference to these meetings in his counter-affidavit. The evidence in regard to them is that of P.Ws. 4, 12 and 17 (petitioner) on the one side and R.W. 2 (1st respondent) on the other. PWs. 4 and 12 are the partners of M/S. Row & Reddi. P.Ws. 4 and 17 speak of both meetings; P.W. 12 speaks of only the first; and R.W. 2 denies both. We have already noticed that the 1st respondent suggested hostile feelings between him and P.W. as he declined to take P.W. 4 as his junior. Now it is suggested that the same is the case in regard to P.W. 12 as he was once a partner with him and later ceased to be one, but both P.Ws. 4 and 12 deny any hostility on their part. Regarding P.W. 17, it is said that, after the loss of his election papers and the unpleasant correspondence (Exs. B-10 series) dated 19th February 1954 wherein it was said P.W. 17 first expressed his suspicion against the 1st respondent's servants and later withdrew, he avoided the 1st respondent and ceased to talk to him. It is urged that, in such a state of relations, these meetings and conversations are quite improbable. P.W. 17 maintains that he continued to talk to the 1st respondent even after Exs. B-10 series, but apart from that, these conversations are not the outcome of cordiality but of protests against grievances and as such will be probable even during bad relations. Probably, bad relations would sometimes induce even unjust and unfounded accusations. P.W. 17 was cross-examined at some length regarding the presence of P.W. 12 at the second meeting and some contradictions between P.Ws. 4, 12 and 17 are also elicited, but these may well be due to the long lapse of time and the consequent difficulty in remembering all and small details. From the belated disclosure of these meetings, it is open to say that they may not be true, but as against that, there are two circumstances inclining one to the view that they may be true. The first is the 1st respondent's failure to deny them in his counter to I.A. 13 of 54. The second is that, in the cross-examination of P.Ws. 4 and 12 his suggestion appeared to be not that the meeting themselves were untrue, but that what was said by him then was not what was alleged or what these witnesses depose. (*vide* the last four lines of page 6 in P.W. 4's deposition and the middle portion of the 1st paragraph of page 18 of P.W 12's deposition.). From an answer of P.W. 4 at page 7 that he was positive about the meetings, it is argued that the case suggested was one of denial, but the next sentence relating to the presence of P.W. 12 at the second meeting shows that the answer above seems to relate to only the details. The matter need not be pursued further, as, after all, what is alleged to have taken place at the two meetings does not lend support to the inferences sought by the petitioner. In this respect we should act only on the pleading in I.A. 13 of 54 (regarding it as particulars) and not on any additions thereto in the evidence, because proof cannot override the pleading. Item 27 therein relating to the first meeting only says that the 1st respondent *jocularly* remarked "Why is my *ex*-partner supporting you". There was no reference at all by him to the petitioner being a communist. The above statement of the 1st respondent cannot be taken to mean that he admitted any propaganda and was justifying it. Item 28 relating to the second meeting carries us no further. After all, P.Ws. 4, 12 and 17 could not have remembered the exact words. In fact, P.W. 12 says that he mentions only the substance from his recollection. P.W. 4 does not remember several details. P.W. 17 was too excited at the time to know what exactly was said. No doubt, he now says that he considers these meetings important, but that should be his view now or shortly before he disclosed them in I.A. 13 of 54 and not at the time of the petition. Else, it is not easy to explain their non-mention therein. He

should not have then considered them important, because it is very unlikely the 1st respondent would have made any damaging statements to his very rival.

17. We now turn to the evidence on behalf of the 1st respondent. As R.W. 2, he denied all the allegations against him and his agents, though in a large number of matters he pleaded ignorance and shifted the responsibility on to his juniors who, he deposed, did all the work for him. He says there is no use or need for canvassing in a Graduates' Constituency as graduates vote, not on the persuasions of the candidates but on their merits and that he did not do any canvassing either personally or otherwise. As the voters may not however take the trouble of filling up the ballot papers and getting them properly attested, he says he organised a body of workers in the city and mufassal who would get this done and collect the ballot papers from voters residing in walking distance of the workers' houses. Further he says that he gave strict instructions to all of them not to speak anything about the other candidates. He wrote to friends to adopt a similar *modus operandi* and exhibited office copies of his letter Exs. B-13(c) to B-13(g), because is friends replied in Exs. B-13 to Ex. B-13-b (1) that the orginals were not traceable. Exs. B-13 (j) is the certificate of posting in respect of the letters calling for the originals. After the filing of the election petition, he verified and obtained confirmation from these friends that they strictly followed his instructions [*vide* Exs. B-12 and B-12 (a)]. It is suggested on behalf of the petitioner that the 1st respondent practically put the answer which his friend was to give even in his letter of enquiry Ex. B-12. It seems so, but R.W. 1 who wrote the reply Ex. B-12 (a) says that he mentioned the truth though he adopted the 1st respondent's language, R.Ws. 1 and 3 deny the propaganda in Salem and Mangalore respectively. Further, in Sch. A, petitioner puts the period of the propaganda as from 13th March 1954 till 22nd March 1954 and to the same effect is his evidence. R.W. 3 left Mangalore on the morning of 15th March 1954 and remained at Madras till 25th March 1954 attending the Assembly sessions as its member.

18. Turning to the case against the 2nd respondent, the place is only Madras city. The first incident at the Cosmopolitan Club is not sought to be proved. The particulars in regard to the other two items are vague and when asked to specify them, the petitioner mentioned a good number of the offices in Madras. P.Ws. 2 and 7 accompanied the petitioner to the Government offices and we have already noticed that they did not mention anything about the 2nd respondent. The petitioner alone brings in the name of the 2nd respondent with regard to some offices (P.W.D., Board of Revenue and some of the A.G.'s Offices) and this was objected to as hearsay. Coming to the third item, none from the Union Co. Ltd. is examined. Petitioner explains that he could not secure their evidence but difficulties in proof do not dispense with the proof itself. As R.W. 6, the 2nd respondent denies having said anything about the petitioner to anyone there. Two employees in S.V.O.C. and voters (P.Ws. 5 and 8) speak of a visit of the 2nd respondent to their effice. According to P.W. 5, the 2nd respondent said that the 1st respondent is a Christian, that the petitioner is a communist and that they should think before they vote. According to P.W. 8, the 2nd respondent said "How you educated people will vote for a communist?" meaning the petitioner. The 2nd respondent deposes that he visited S. V. O. C., there met three employees and that, in reply to a question by two of them about the petitioner's politics, he said he did not know anything about them but that he knew that he was supported by communists. Further, he deposes that he never said even this to anyone unless questioned. How often he was questioned and to how many he said so is not elicited by the petitioner. It is not clear how exactly P.Ws. 5 and 6 understood him and they admit that there was no pressure or threat. P.W. 8 also said that the 2nd respondent declared himself a Congressman before him, but that is unlikely as he publicly announced that the Congress did not put up a candidate. There remains one more item and that is the conversation between the 2nd respondent and P.W. 1 (Mr. Govind Swaminathan) in the Steward's room of the Madras Race Club. The petitioner mentioned it only in his further particulars filed on 18th November 1954, but the 2nd respondent admits the conversation though he differs in respect of his statement then. P.W. 1 does not remember the exact words of the 2nd respondent but thinks that he gave him the impression that he was definitely conveying to him that the petitioner was a communist. On the other hand, the 2nd respondent deposes that P.W. 1 joined him at the lunch table and began a sort of conversation in which he asked him how he was betting on in his election campaign. Out of politeness, he replied that he was getting on nicely except in places where trade unions and associations were dominated by communists. He says that those trade unions and associations were working for the petitioner and that he had in mind the S.V.O.C. Union, but that he did not tell P.W. 1 that the petitioner is a communist. He says he

saw P.W. 1 often but never spoke to him. They never called on each other. Questioned if he knew the 2nd respondent. P.W. 1 replied that he knew the petitioner better but did not say how well he knew the 2nd respondent. It does not appear that they knew each other so well as to speak without reserve. P.W. 1 also does not say who started the conversation and how this topic arose. Having regard to the degree of their knowledge of each other and having regard to the fact that the 2nd respondent only replied to a question in a casual conversation started by P.W. 1, it is argued that it is not probable that the 2nd respondent should have told P.W. 1 that the petitioner is a communist or would have said with any purpose. It is urged that he must have given only a polite reply to a casual query. It is further said that possibly P.W. 1 formed his impression because of his interest in the petitioner and his loyalty to the profession to which both of them belong. Further, P.W. 1 does not remember who or how many were present at the time but R.W. 6 says that he and P.W. 1 alone were then present. In that case, he could not have intended to make any propaganda and it will not be possible to say, as P.W. 1 said, that the 2nd respondent was "spreading a story". P.W. 1 himself concedes that the expression is somewhat loose. As R.W. 6 the 2nd respondent denied all the allegations against him and did not adduce other evidence, his case being that he contacted the electorate only by post.

19. Let us next consider the probabilities urged by both sides. What was said on behalf of the petitioner is this. An *Ex*-Chief Minister of Madras made a speech that communists are public enemy No. 1 and judicial notice may be taken of it. Whatever may the ultimate judicial pronouncements, there was this fact that the Government—as the Executive authority—punished communist connections. (*vide* Ex. A-28, page 29). Hence, the respondents 1 and 2 started a propaganda that the petitioner is a communist to deflect his vote. South Kanara district is congress minded. This is clear from the results of the general election in 1952 as stated by R.W. 3. A large body of Roman Catholics live in that district and Roman Catholics are opposed to communism. So, the communist propaganda is a good method of deflecting the petitioner's votes. The 1st respondent advertised himself as an anti-communist and he must have well known that communist propaganda about the petitioner will deflect his votes and should therefore have spread it. Though very eminent persons who can in no sense be said to have anything to do with communists nominated and supported the petitioner, the two respondents ignored them and spread the propaganda merely because two family and childhood friends (P.Ws. 4 and 12) helped the petitioner as such but not as members of the communist party. On the other hand, the respondents 1 and 2 urge the following considerations. Petitioner was helped by leading and well known communists. P.Ws. 4 and 12 are two such and their firm (M/S. Row & Reddi) does all the legal work of the communist party of India in Madras. Mr. Mohan Kumaramangalam—another leading member of the party—helped him. The petitioner tries not to admit it but P.W. 11 admits that he wrote on his behalf. All of them deposited ballot papers before the Returning Officer. P.Ws. 5 and 8 supported him. The latter is a member of the S.V.O.C. Employees' Union and he admits that Mr. Mohan Kumaramangalam is its Vice-President. There is no need for this speculation at all; for, P.W. 6 admits that he heard in the Y.M.C.A. that the petitioner had the *support* of the communists. The petitioner and his family and childhood friends may know between themselves for what private reasons the latter helped but the electorate, who are wholly unaware of it, will draw the natural and reasonable inference flowing from communist support. The impression in their mind must thus be its necessary consequence. That impression is the result of his own doing and the help and canvassing he sought from his communist friends and supporters and their friends. Also the petitioner admits that he did not disclose to the gentleman who nominated him the help and support he was to get from these friends. Again he could have made a public denial of his communist connections immediately he knew of it on 18th March 1954 and his explanation that he had no time and that the mischief was already done is unconvincing. The real reason is that he dare not do so as he could thereby forfeit the communist support. After all, there is no need for this speculation, because besides R.W. 3, P.W. 18 admits his having told Mrs. Pinto that the rumour of petitioner being a communist may have arisen because Messrs. Row & Reddi were appearing in communist cases and they were working for him. The Government sought to punish not communist connections but acts of violence, communist party was one of the recognised political parties and many were elected on that ticket. For example, Mr. V. G. Row himself. On behalf of the petitioner, it is explained that a public denial will only make more people know of the mischief and from this, the learned advocate for the 1st

respondent observed that its necessary implication is that the mischief must have been originally little or nothing. His suggestion is that the petitioner must have been set up by P.Ws. 4 and 12 to make this unjust and unfounded charge by reason of their hostility to the 1st respondent. Again, this election is on the system of a single transferable vote and a combination of two rival candidates is not possible and the charge that the respondents 1 and 2 combined in the propaganda is altogether without foundation.

20. After a careful consideration of the evidence and probabilities, we are unable to say that the petitioner has satisfactorily discharged the onus lying on him and that he has proved, beyond reasonable doubt, that respondents 1 and 2 carried on the alleged propaganda against him. This is the finding on the first point mentioned in paragraph 9 above.

21. *Point* 2.—From the finding of fact on the 1st point, this and the 3rd point do not arise, but as they are argued we consider them. An election may be declared to be wholly void on any one or more of the three grounds mentioned in clauses (a) to (c) of Section 100(1) of the Act. The petitioner does not rely on the ground in clause (a) and the Tribunal held, in the examination of the petitioner, that he cannot rely on the ground in clause (c). There remains the one in clause (b) and that requires coercion or intimidation exercised or resorted to by any particular community, group or section on another community, group or section to vote or not to vote in any particular way with the consequence that the election has not been a free one. The explanation defines the expression "coercion or intimidation" in clause (b). Para. 8, of the petition no doubt says that the election has not been a free election on account of undue influence [found in clause (a) but not in this clause] and intimidation, but did not mention the groups exercising and exercised on. When required to do it, the petitioner gave particulars on 15th June, 1955. There he stated that the respondents 1 and 2 and their agents who belonged to one section or group of anti-communists like the Catholic Association of Mangalore, Y.M.C.A., Welfare Mission, Indian Christian Temperance Association, and groups of commercial employees constitute the group exercising and that Government servants and employees, Catholics, employees in commercial firms and congressmen from the group or section on which coercion or intimidation are exercised. It is not possible to accept this classification. Surely, a candidate and his agents and supporters work for his success, but they do not come under the expression "community, group or section" mentioned in the clause. Next, the individuals mentioned above as the opposite group do not also come under that expression. In some cases, they may have similar or even identical political views but in no sense can they be described as a community, group or section within the meaning of the clause. Each individual exercises his franchise in the manner he likes and several individuals exercising it in the same manner cannot become a community, group or section within the meaning of the clause. In fact, they will have nothing to do with other voters. Again, as already noticed, in an election based on single transferable vote, no two candidates can be put in one group. We are of the opinion that section 100(1), is not attracted at all in this case and the point is found against the petitioner.

22. *Point* 3.—As mentioned above, this point also does not arise from the finding of fact on point 1, but it is considered as it is argued. It is argued on the *assumption* that there was publication of a false statement that the petitioner is a communist. Under Section 123(5), the publication of the false statement of fact must be in relation to the personal character or conduct of the candidate or in relation to his candidature. The petitioner contends it has relation to both, while the respondents 1 and 2 maintain it has no relation to either. As regards the relation to personal character, the petitioner relies on the observations in 12 Halsbury page 277, para 542 Hailsham Edition and *Lachiram* v. *Jamunaprasad* (Gazette of India, dated 11th January, 1954, page 53, at 61) which on appeal is reported in A.I.R. 1954 S.C. 686. The relevant observation relied on in Halsbury is this:

> "The false statement of fact need not be libellous at common law, so long as it is a statement which is calculated to influence the electors, as, for instance, a statement made in a hunting county that the candidate has shot a fox or a statement made to promoters of total abstinence that the candidate has taken a glass of wine".

But the very next sentence is:

> "But it is essential that it should relate to the personal rather than the political character or conduct of a candidate",

and the two illustrations given above relate to personal character. On the other hand, the respondents rely on another observation in para. 702, at page 349. It runs thus:

> "It is an illegal practice for any person..... for the purpose of affecting the return of any candidates at such election, to make or publish any false statement of fact in relation to the personal character or conduct of any candidate at the election,"

and the above statement is supported by *Burns* v. *Associated Newspapers Ltd.* (1925), where it was held that to state that a candidate was a communist was not a false statement as to character within the statute. The petitioner explains that in deciding the nature of a statement regard must be had to time, place, context and persons to whom it is made. His suggestion is that, in a country where officers are punished for communist connections, the calling a man a communist amounts to a statement in relation to personal character, having the effect of deflecting his votes. The reply is that, as already stated, the punishment is not for communist connections but for acts of violence which is evident from even Ex A. 28. In Lachiram's case the facts are that one Mr. Kesava Sastri, first promised not to stand and it is alleged that contrary to his promise he subsequently stood to get the Congress victorious as a candidate of the Ramrajya Parishad which was supported by the Congress. This allegation of the promise and its breach was found to be false and it was held to affect his character. The present case does not fall under that class; for, while the petitioner stood as a non-party independent candidate the alleged false statement is that he is a communist. It means that a contrary statement is made in respect of his political affiliation and not in regard to personal character. As against this, the respondents rely on *Ramsingh* v. *Indersing* (1 Indian Election Cases 341), and several English decisions including the Cockermouth Division Case. All of them uniformly lay down that the false statement must distinctly relate to a candidate's personal conduct and not his public or political conduct. In view of the preponderance of authority and the inapplicability of Lachiram's case, the decision must be in favour of the respondents. Next as regards the contention regarding "candidature". Indian Election Cases Vol. I page 341 above cited and *Krishnaji Bhim Row* v. *Shankar Santharam* (7 E.L.R. 100) are directly against the petitioner and his contention must fail. The answer to the hypothetical question posed at the head of this point must then be answered in the negative against the petitioner. It follows that the respondents 1 and 2 cannot be charged with the major corrupt practice under Section 123(5), and that is our finding.

23. *Issue* 7.—In paragraph 11, of his petition, the petitioner alleges two corrupt practices under Sections 123(7) and 124(4) by each of the respondents 1 and 2 and gives the particulars in Schedule C. Under Section 123(7), the incurring or authorising by a candidate or his agent of expenditure in contravention of the Act or rules made thereunder amounts to a major corrupt practice. In this case, the prescribed maximum is Rs. 3,000 and any expenditure in excess of it will be in contravention of the Act. The returns of election expenses (Exs. A-15 and A-16) by the two respondents give their total expenditure as Rs. 2,805-2-3 and Rs. 2,424-1-0 respectively. The petitioner's case is that, as a matter of fact, each of them incurred much greater expenditure but concealed it by not exhibiting it in their returns and that if those undisclosed items be added, the prescribed maximum will be exceeded and they come under Section 123(7). If the maximum is not exceeded, he contends, they fall under Section 124(4), that is, the making of a return which is false in any material particular or the making of a declaration verifying such return, by reason of concealment by non-disclosure of expenditure incurred and other defects.

24 At the outset, we may notice that the respondents 1 and 2 appointed themselves as their election agents. This makes them liable both as a candidate and his election agent.

25. Before we take up the items in Schedule C for consideration, we can conveniently examine the law relating to election expenses, so far as it is relevant to this case, as it arises in the case of both the respondents 1 and 2. Section 44, enacts that every election agent shall keep separate and regular books of account and shall enter therein such particulars of expenditure in connection with the election as may be prescribed. Rule 111, provides that the books of accounts to be kept by an election agent under Section 44, shall contain a statement

> "(a) of all payments made or authorised by the candidate or by his election agent or made on behalf of the candidate or in his interests by any other person with the consent of the candidate or his election agent

for expenses incurred on account of, or in connection with, the conduct and management of the election, and

(b) of all unpaid claims in respect of such expenses of which the candidate or his election agent is aware."

and Rule 112(2), provides that the return of election expenses shall be in form 26 and shall contain the particulars specified in paragraphs 1 and 2 of Schedule IV and shall be accompanied by the declarations referred to in Section 76(2). The said declarations shall be in the forms contained in paragraph 3, of the said schedule. So much about the preparation and submission of the returns of election expenses.

Next, payments made or expenses incurred by other persons at the request of the candidate are part of the election expenses, because to that extent the candidate is relieved of the expense and should be included in his return by the candidate [*vide Cockermouth division case* (5 O. M. & H. 155) and *East Dorset Case* (6 O.M. & H. 22 at 38 and 39)]. Such persons may be deemed to be the candidate's agents. Such agency may be expressed or even implied from conduct In *Nyalchand Virchand* v. *Election Tribunal, Ahmedabad* (8 E.L.R. 417), one Mehta issued letters to the voters to support the Congress candidate and sent such letters to the candidates also. On this, it was observed that there was not only a *prima facie* case of agency but also a *prima facie* case of knowledge on the part of the candidate and that the question which the Tribunal should have considered was whether this constitutes ratification on the part of the candidate and thereby constituted Mehta as his agent. Election agency is much wider than the ordinary law of contract and can be created without any express authorisation or declaration in writing. In each individual case, it is to be inferred from its circumstances (Indian Election Cases, Sen and Poddar 1021). The correctness of the above principle is not disputed in the present case, but it is urged that free services need not be evaluated and exhibited. For this view, reliance is placed on two decisions. The first is *Munusami Gownder* v. *Khader Sheriff* (4 E.L.R. 283 at 300). In that case the candidate did not exhibit in his return the value of the fees payable to his Counsel who appeared for him at the scrutiny of the nominations. The said Counsel stated that he appeared as a personal obligation on grounds of friendship and without charge therefor. The argument that, even so, this ought to have been evaluated and included, was rejected on the ground that it is not supported by authority and that it did not commend itself to them and that, in any event, they were unable to find any basis for such an evaluation. The petitioner contends that, as a matter of fact, there is authority and relies on Sen and Poddar 261 (*Khan Bahadur Haji Padi Ahmed Chaudhury* v. *Muhammad Anwarul Azimz*. In that case a candidate printed his election literature and issued a special edition of a newspaper in his own press and yet it was held that he should have exhibited it in his return. The respondents 1 and 2 distinguish this decision on the ground that it was a special expense incurred by the candidate unlike the facts herein. Also they contend that it was wrongly decided, for which however no authority or ground is cited. On the other hand, the following observation at page 117 of Parker's Election Agent and Returning Officer, 7th edition, relying on the *Cockermouth Division Case* (5 O 'M & H. 158) shows that the respondents' contention is wholly untenable:—

> "A gift in kind being equivalent to a gift in money, contributions towards election expenses must be returned as well as expenses incurred. .....It does not seem necessary to state the value of such literature in the return of election expenses, but such value must, it is submitted, be taken into account in estimating the maximum."

If the view urged by the respondents 1 and 2 be accepted, every candidate can merely state that, in every department of his election activity, friends helped him in kind and submit a 'Nil' return. The second decision relied on by the respondents 1 and 2, is *Ranajya Singh* v. *Baijnath Singh* (A.I.R. 1954 S.C. 749). In that case the servants of the candidate's father worked for the son, not at the request of the son but under the direction of the father. There was no proof of authorisation by the son. The Supreme Court held that, so far as the son was concerned, they were mere volunteers. As such that decision has no application to the point now under discussion. Another question argued was when election expenses begin and when they end. The decision in 4 E.L.R. 283 considered this matter at length and decided that it depends upon the facts of each case, that it is only one element to be considered and that the real matter to be considered is not the period of time at all but the purpose for which the expense was incurred. We may point out that, in the case before us, this aspect does not at all arise. The items, in regard to which the question is whether they should or should not be included,

were admittedly incurred for the purpose of the election and in its conduct and management and are election expenses. They were not shown in the return on the ground that services were rendered free and that is different from saying that they are not election expenses at all. A contention raised on behalf of the 2nd respondent is that, having regard to the expressions "Expenses, Expenditure, Incurring Paid and Unpaid claims" in Rule 111 and also Form 26, only cash expenditure by the candidate's friends and agents comes under the description of election expenses and not free services which on evaluation may be equivalent to some cash. We do not find support for this view. On the other hand, the authorities quoted above show contra. The argument is advanced in reference to the free advertisements, free printing of manifestoes and free reprinting of the electoral rolls for the 2nd respondent and the cost of making blocks for the 1st respondent's manifestoes. It may be free so far as they are concerned but it cannot be free or without expense in regard to the newspapers, the press or the individual who got the manifestoes printed and the block makers. Even if the advertisements be a part of the newspaper, it will still be expenditure, may be, part expenditure being part of the whole cost of publication.

26. Schedule C mentions the following items as the particulars of the charges against the 1st respondent: (1) The amount of Rs. 527-0-3, shown towards postage, telegrams and telephones is incorrect. (2) The following items have not been included: (a) Amounts spent for gaining popularity like donations of Rs. 100 each to Welfare Association, the Indian Christian Temperance Association and the Dakshina Bharat Praja Sammelan (b) Cost of tea parties given in honour of Mr. Jogg at the Y.M.C.A., Vepery and cost of tea parties given bi-weekly at his residence and (c) moneys expended by third parties on his behalf including the value of postal stamps on parcels received by him from the mufassil. (3) No figure is shown in the receipts-column nor the value of the publicity given to him at the Potato Growers' Conference. In paragraph 27, of his written statement, the 1st respondent says that he engaged a messenger for two months and had his appeal and the connected papers delivered personally to a majority of voters in the city. In the districts also, his many friends caused the delivery to many voters personally. Thus, he says he reduced the postage. As regards donations, he says that he has been contributing to various causes, persons and institutions for many years past but that they have nothing to do with the election. He is not aware of any Welfare Association but admits having been making contributions to Welfare Mission for some years but adds that they have nothing to do with the election. Also he states that a contribution of Rs. 100, to repair the buildings, was made to the Indian Christian Temperance Association long after the results of the election and that it has nothing to do with the election. A contribution of Rs. 101, for expenses for an all-party public meeting to protest against the military aid to Pakistan by the United States of America was made to the Dakshina Bharat Praja Sammelan but it has nothing to do with the election. Regarding tea parties, he is not aware of any person like Mr. Jogg, but he, as a Director, entertained prominent members of the Y.M.C.A. from outside the State, but it has nothing to do with the election. The allegation regarding the bi-weekly tea parties at his residence is false. Likewise is the allegation that moneys spent by third parties for stamps etc. have not been included. Whenever any expenditure was incurred by his friends on the election with his consent, such amounts were paid along with other items and these are shown in the return. The Potato Growers' Conference discussed their problems which had nothing to do with the election and this respondent addressed the Conference as many others did at the request of the Association. The charge that no figure is shown in the receipts column is unsustainable. It is only when a candidate has an election agent other than himself that that column should show the amount received by him from the candidate but if the candidate himself is the election-agent, no figure need be shown therein.

27. Paragraphs 4 and 5 of the further particulars dated 18th November, 1954, are (a) that the cheque for Rs. 100 given to the Indian Christian Temperance Association was at a meeting held in April, 1954, to congratulate the 1st respondent on his success; (b) that the donation to the Dakshina Bharat Praja Sammelan was given to Mr. K. Ranganathachari in March-April, 1954 before the close of the election campaign; (c) that the donation to the Welfare Association was paid by cheque and that the exact date of this donation can be ascertained from the bank pass books of the 1st respondent between January and April, 1954. In I.A. No. 13 of 1954, the petitioner adds a new item *viz.*, the use and cost of motors in questions 3 to 5. He detailed the tea parties in questions 17 to 24. Also he mentioned in question 1 that the 1st respondent did not

file with his return of election expenses (1). printer's bills, (2) accounts submitted by petrol bunks, (3) accounts of postal expenses and (4) accounts of expenses incurred by his agents. We can now take up the several items for consideration.

28. *Postal charges.*—The total number of electors in the Graduates' Constituency is about 25,000 and the 1st respondent (R.W. 2), admits that he instructed that the manifestoes should be sent to all the voters. These manifestoes are Exs. A-2 series and they contain 4 or 5 sheets each. Further, R W. 2 admits that he got his manifestoes printed twice and that it may be that one voter got two manifestoes. From these facts, the petitioner contends that the minimum postal charges for the issue of the manifestoes alone should be 25,000 annas (if sent only once) and 50,000 annas (if sent twice) *i.e.*, Rs 1,560 or Rs 3,120 respectively. As against this, R.W. 2, explains (in consonance with his written statement) that in the city he sent to most of the voters by messenger and that in the mufassil friends distributed them. He adds that they were sent by post only if they were not delivered by messenger. The petitioner points out that the 1st respondent's election return (Ex. A-15), discloses that the messenger was engaged only for two months (December 53 and January, 54), and that the manifestoes must have been despatched long before those months as the supporting letters etc. were obtained even in September, 1953, and would not have been retained without despatch till December. The 1st respondent points out that the supporting letters and the explanatory notes were all sent together, that the explanatory note was printed as late as 30th October, 1953, and that the actual despatch of the manifestoes must have been some time later. On this point, his oral evidence is that his juniors were doing this and that he cannot say when they were sent. It may be that they were sent during November, as no candidate will waste time unnecessarily but it is possible that they may have been despatched during December. In his cross-examination, it is elicited that an envelope (Ex. A-40), bears his office seal and must have been sent from his office but he says that he does not know if any manifesto went in it and he even ventures a guess that it may be some other correspondence and that the addressee was not known to him. This he does, probably because he feels it is against him, but the size of the envelope points to a manifesto being sent in it. It is true that a candidate cannot know all the voters personally and his juniors may have sent a manifesto in this envelope. The postal seals thereon bear the dates 17th December, 1953 and 19th December, 1953, indicating the dates of posting and delivery and they support his version that the manifestoes were despatched only during that month. One may or may not be able to accept the 1st respondent's version, but the onus of proving that he spent anything higher than he has shown lies upon the petitioner. The evidence is not sufficient to hold that he successfully discharged it.

29. *Donations.*—It is true that the 1st respondent admitted that he has been making some contributions to several institutions but he says he has been doing it for many years and that none of them has anything to do with this election. This does not amount to an admission of the charge made against him by the petitioner in his further particulars of 18th November, 1954. The decisions in the *Wigan Case* (4 O'M & H. 1) and the *Kingston case* (6 O'M. & H. 372) both of which are approved in *Khader sheriff* v. *Muniswamy* (A.I.R. 1955 S. C. 775) point to the risk of a candidate at an election of giving donations and making charities during the period of election but here again, the onus lies on the petitioner and there is no evidence on his part that the donations herein were made during or for the purpose of elections.

30. *Tea Parties.*—The 1st respondent admits just two tea parties. One was in honour of Mr. Kuruvilla Jacob, going to America and that in December, 1953 or January, 1954. The other was in honour of Mr. Bose, Finance Secretary, of National Y.M.C.A who was on a visit to the Vepery Y.M.C.A. Being a Director, the 1st respondent was put as the host and he paid Rs. 25 for twenty five invitees. He denied all other tea parties. There is no evidence on the petitioner's side about other parties. The two parties admitted have not been shown to have anything to do with the elections.

31. *Postage incurred by friends.*—There is no evidence of any such expenditure which has not been included.

32. *Receipts.*—It is true the first page of the 1st respondent's return Ex. A-15 shows "Nil". His contention is that nothing need be shown therein if the candidate *himself* (as in his case) is the election agent. The petitioner contends this is not correct, and he is right; for the expression "receipts" in the form itself is stated to include all moneys, securities and equivalents of money received

from any person (including the candidate himself), club, society or Association, in respect of any expenses, whether paid or remaining unpaid, incurred on account of or in connection with, or incidental to the election. It is also provided that the name of each such person etc. and the amount received shall be shown separately. The petitioner also relies on *Khan Bahadur Haji Badi Ahmed Chaudhury v. Muhammad Anwarul Azim & others* (Indian Election Cases by Sen and Poddar page 261). It was held therein that keeping blank the form relating to "receipts" in the return of election expenses makes the return defective in form.

33. Turning to I.A. 13 of 54, we notice that a new item relating to the use of motor cars of others was therein raised. There is no evidence in respect of this allegation. The petitioner however refers to a letter by the 1st respondent (Ex. A-42(a) dated 15th March 1954) to one A. Vasudevan, Advocate, Kozhikone. Therein, the 1st respondent wrote that he should ask his friends to write to Sri Unhikutty and Sri Krishnan for cars and that he could do it only the next day. The petitioner contends that he might have so written and that he has not shown the value of that loan. The 1st respondent deposes that he does not remember if he actually wrote and we cannot presume that he did. Next, the petitioner refers to the evidence of R.W. 3 (L. C. Pais) that he, Mrs. Lora Pais and Mrs. Pinto went in cars for collecting the ballot papers for the 1st respondent and that he should have included the cost of that use as well. R.W. 3 admits having gone with the 1st respondent's nephew Mr. Verghese for such collection and his evidence also discloses that the two ladies were the persons mentioned by him to the 1st respondent to work on his behalf. R.W. 3 went round only twice, on the afternoon of 13th March and the forenoon of 14th March and it is not known how often the other ladies went round. Further, there is no evidence whether they went on this sole purpose or did this work when they went out on their own business. Moreover, this charge was not set out either in Sch. C or in the further particulars and the 1st respondent relies on *Bhikaji Keshao Joshi* v *Brijlal Nandlal Biyani* (1955 (II) M.L.J.154) and contends that where particulars are wanting, that part of the case must be rejected. It is doubtful if the notice to admit documents can be taken as particulars and therefore the decision seems to support the contention.

34. In the course of the arguments reference was also made to the value of the services rendered by the numerous workers and supervisors of the 1st respondent.

It is true the 1st respondent used a large body of workers and supervisors and his contention is that they must be regarded as mere volunteers. Whether that be so or not, it should be pointed out this was not mentioned specifically in the particulars to enable the 1st respondent to meet it.

35. There remains the complaint relating to non-production of the items mentioned in question (1) in I.A. 13 of 54. This is strictly not a charge of non-inclusion of any item. If the petitioner wanted them, he could have summoned for them, but he did not. One point which however arises in regard to the printers' bills is that only two receipts for Rs. 557 are enclosed in the return but not the bills themselves. The petitioner's suggestion probably is that they show a larger amount or that if they be produced the work charged for may be known. Adverting to the latter, we have to consider the cost of the blocks of the several sheets of the manifestoes (Exs. A-2 series). R.W. 2 deposes that his nephew Mr. V. John, proprietor of Klein & Peyerl, block makers, prepared them for him and did not send a bill. From the statement of Law made in paragraph 25 above, the cost of preparing those blocks will be election expenses and have to be shown in the return both under receipts and expenditure, but even they are included the total expenditure of the 1st respondent would not exceed the maximum of Rs. 3,000, because the cost of making these blocks cannot be much and can in no event exceed the margin of Rs. 491-13-9 still open to him to make up the maximum. It follows that the 1st respondent has not been shown to have incurred or authorised expenditure in contravention of the Act and that he cannot be charged with the corrupt practice under Sec. 123(7).

36. Coming to the 2nd respondent, the particulars against him in Sch. C are (a) non-inclusion of receipt of any amounts in the receipt column (b) non-indication in the total of his expenditure the value of (1) the newspaper advertisements (2) the printed election manifestoes (3) the reprinting of the electoral rolls, (4) the election publicity given to him by the Swatantra and (5) the expenses incurred for the visits to Coimbatore and Vellore. In paragraph 16 of his written statement, the 2nd respondent complains that the particulars in Sch. C are general, indefinite, defective and incompatible with the allegations in the main body of the petition. He asserts that he submitted his return showing all material particulars and setting out *bona fide* all information without any attempt at suppression or concealment. He adds that defects, if any, are purely formal

and technical, and not wilful or intentional. In paragraph 17, he admits having visited Coimbatore once in connection with his professional work and not for the election. He denies his visit to Vellore. In his further particulars of 18th November 1954, the petitioner details the advertisements in the *Hindu* and the *Indian Express* and the publicity in the *Swatantra*. Regarding the election manifestoes, he says they were printed at the Ahura Press, Wallaja Road, Madras-2 on thick green paper with the 2nd respondent's facsimile. Further, he says he disclosed them in his list of documents as items 29, 69 and 70 and that he understands that nearly 40,000 copies were printed. In annexure II relating to this respondent in I.A. 13 of 54, the first six items relate to the reprinting of the electoral rolls by the *Indian Express*: item 11 to the use of some of those rolls for the addresses an the manifestoes; item 13 to the four advertisements each in the *Hindu* and the *Indian Express* on different dates; and items 8 to 10 to the printing of the manifestoes, by the Ahura Press. The documents' list at the end of this annexure details the manifestoes, issues of *Swatantra* and the electoral roll. In his counter affidavit to this petition, the 2nd respondent complains it is only an attempt to fish out information as the petitioner himself does not know his case, that it is not only not desirable but even unsafe for him to make any sort of admission and that the only consequence of refusal to admit will be to order costs in respect of proof. We may now take up the several items for consideration.

37. *Receipts Column in Ex. A-16 "Nil".*—The remarks in this respect as regards the return of the 1st respondent equally apply to this respondent. The form is defective.

38. *Non-inclusion of certain items in expenditure that ought to be included according to the petitioner.*—At the outset, we may state that there is no evidence for the petitioner regarding the alleged visits to Vellore and Coimbatore. Next, as regards the publicity in the *Swatantra* (Exs. A-5 series) the 2nd respondent denies that he authorised its editor to do it for him. Also he denies knowledge of these publications and says that he knew of them only when they were shown to him in his evidence. The petitioner contends that this is unacceptable, because the 2nd respondent did not deny it either in his written statement or his counter in I.A. 13 of 54 and because they are in the first person and above his name and outside the editorial matter. These are no doubt weighty considerations, but there is no proof of actual authorisation and the editor did not also produce the order though summoned for. We cannot presume authority and hold that it is part of the election expenses. Hence, our opinion is that this item of expenditure need not have been included.

39. As regards the advertisements in the *Hindu* (Exs. A-3 series) and the *Indian Express* (Exs. A-23 series), the respondent admits that he requested them to publish them. In fact, in the case of the *Hindu*, a bill was sent to him; but when he went to its office to point out a defect in that publication and offered to pay, he deposes that the editor declined to charge, observing that the bill should not have been sent at all and assuring that there will be no repetition. In the case of the *Indian Express*, he says there was no bill at all. He explains that the editors of the *Hindu* and the *Indian Express* are his personal friends. As regards the printing of the manifestoes (Exs. A-6 series), his evidence is this. Sri C. S. Lokanathan a member of the Cosmopolitan Club, asked him where he was going to print them. He told him that he had not yet decided. Then Mr. Lokanathan offered to have them printed in a press known to him. About 20,000 manifestoes must have been printed. The 2nd respondent says that he signed on a blank paper and gave it to Mr. Lokanathan to have his facsimile printed on the manifestoes. He did not receive any bill up to date from the printers. So he says he did not incur any expense. He did not ask Mr. Lokanathan to incur any expense on his behalf. He meets this Mr. Lokanathan almost daily in the club. He thinks that Mr. Lokanathan has not paid for the printing. After the petition, he made enquiries about the press and was told it had changed many hands. It is correct to say that for his manifestoes the printing was to him done free of cost. In the notes below on pages 6 and 7 of his election return (Ex. A-16), the 2nd respondent stated that the advertisements in the *Hindu* and *Indian Express* and the printing of the manifestoes were done free of cost. Lastly, we come to the reprinting of the electoral roll. We may notice that nothing was stated in respect of them either in the written statement or in his counter-affidavit to I.A. 13. In the note below at page 6 of his return, he says that the reprinting of the voters list (electoral roll) was done free of cost by shri Ramnath Goenka of Messrs. The *Indian Express*. This statement remained unaltered until it was given up by him in his evidence. In his evidence, he explains the expression "reprinting" in his note as the

"reprinting from the official copy by the *Indian Express* for its own purposes". That purpose according to the evidence is this. The Assistant Manager of the *Indian Express* is examined as R.W. 7. He says that Exs. A-14 and A-25, the former produced by the petitioner and the latter produced by the *Indian Express* in obedience to summons to produce the electoral roll printed to the order of the 2nd respondent, were no doubt printed by the *Indian Express*, but not in pursuance of any order or request of the 2nd respondent. In fact, his story is that they were not printed for him at all. It appears they have printed about 200 or 300 lists for their own purpose of canvassing subscribers through the agents. About a month after they were so printed, he deposed, the 2nd respondent asked him if he could give him a few copies. He said he had no objection on condition that he returns them after use and gave about 25 to 30 copies. After the elections, the 2nd respondent returned all except 4 or 5 and R.W. 7 did not bother about the shortage. He did not charge the 2nd respondent anything for the use or the loss of the lists. To the same effect is the evidence of the 2nd respondent. Having been informed in the club by somebody that the *Indian Express* were printing the electoral rolls from time to time, he says, he met the Assistant Manager (R.W. 7) who confirmed his information and also offered to loan them to him and in fact lent about 30 lists. He used up one or two of them by cutting them for the addresses on the manifestoes. That he did so is evident from Exs. A-6 and A 6(a). He sent the rest to his workers with instructions to return them. They did so (except 3 or 4 or 5) and he returned them to the Assistant Manager. The *Indian Express* did not charge anything for the use or shortage of the lists. Consistently with this loan theory, he explains the expression "reprinting" in the note below in Ex. A-16 above referred to as the reprinting from the official copy by the *Indian Express* for its own purposes and not for him. We have first to decide whether we can accept this loan theory disclosed only in the evidence. In our opinion, we are unable to accept it and our reasons are these. (1) In spite of the charge in the petition and the notice to admit the facts and documents (I.A. 13 of 54), this respondent declined to make any statement for one reason or other and allowed his statement of "reprinting free of cost" to stand unaltered. The story of the loan comes for the first time in the evidence on 20th March 1956. (2) If the *Indian Express* reprinted for its own purposes, one would expect something in writing by way of office order or instructions in respect of it. But the Assistant Manager (R.W. 7) says it was all done orally and it is not convincing. He admits having purchased an official copy shortly before the reprinting and also admits that as many as 200 or 300 copies were reprinted. It is difficult to believe that all this would be done and the whole expenditure would be incurred without any record in a well-organised newspaper office like the *Indian Express*. (3) The story that the *Indian Express* printed these electoral rolls for its purpose of canvassing for subscribers is too improbable to be believed. We do not believe it is one of the usual methods of canvassing subscribers, even if we assume that this newspaper is in need of canvassing. The Assistant Manager has been in the service of this newspaper office from 1949 and he is unable to say whether, at any time before, the electoral rolls were likewise printed for the same purpose. He realises the necessity for the periodical reprinting because of deaths or changes in addresses, but he says he is not aware of such reprinting. (4) If the loan theory be true, there was no reason why the 2nd respondent mentioned "reprinting" in the note below above referred to. Even then, he could have said it was a loan. (5) The expression "reprinting" has its own meaning. It is not a word of foreign language and no evidence is admissible to explain it. Hence his explanation to make it agree with the theory of loan cannot be accepted. (6) It is because it is a costly job of reprinting 200 to 300 copies each of 596 pages that the note below in Ex. A-16 refers to the proprietor Mr. Ramnath Goenka. If it were a loan (as maintained in the evidence) of about 25 to 30 copies of which again all but 4 or 5 were returned, there is hardly any need to refer to the proprietor; for the Assistant Manager (R.W. 7) says that he could do it himself without consulting his proprietor and that he did in fact do so.

40 Having rejected the loan theory as untrue, the further question is whether we can act upon the admission of reprinting free of cost mentioned in the note below in Ex. A-16 Even in a criminal case, when an accused first makes an admission and then resiles from it and makes a self-exculpatory statement, the law permits the earlier admission to be relied on and an election proceeding is not in any way higher than a criminal case. We are therefore of the opinion that we could and should act on the admission in Ex. A-16 that it was printed free of cost meaning thereby it was free for the 2nd respondent and that the cost was incurred but was waived by Mr. Ramnath Goenka.

41. The next question is whether these items of expenses not charged for from

the 2nd respondent should be included in his return. Our answer is in the affirmative. The legal position has been already discussed earlier under this issue.

42. The next question is what should be the expense or expenditure in regard to each one of these items which ought to be included in the 2nd respondent's return. Of the four newspaper advertisements in each of the *Hindu* and the *Indian Express*, one in each relating to the expression of thanks after the election *i.e.*, [Exs. A-3(a) and A-23(c)] have to be excluded, because they do not form part of the election expenses. The advertisement tariffs are Ex. A-4, in the case of the *Hindu* and Ex. A-24, in the case of the *Indian Express*. Exs. A-3(b) and A-3(c) are announcements 2″ by 2″ single column. According to the tariff Ex. A-4, each of them would cost Rs. 36 and this is in consonance with the charges made by the same paper in respect of the other candidates and even less. Ex. A-23 is an announcement 2″ by 2″ double column and the cost will be Rs. 60 according to Ex. A-24. Ex. A-23(b) is an announcement 2 1/2″ by 4″ double column and its cost according to Ex. A-24, will be Rs. 75. Ex. A-23(a), relates to the 3rd respondent and is therefore excluded. The total cost of the advertisements in the *Hindu* and the *Indian Express* would thus come to Rs. 108 + Rs. 135 = Rs. 243.

43. The manifestoes Exs. A-6 series are printed on thick green paper fit for being despatched as such by book post. Below the manifesto, the facsimilie of the 2nd respondents signature is printed and some cost would have been incurred for preparing the block. In this case, we can fix the cost only approximately and in doing so, we shall adopt the irreducible minimum. We find that the petitioner paid Rs. 24-10-0 for printing 1000 copies of appeal of the type of Exs. A-1(a) series (*vide* voucher No. 15-A in Ex. A-18). To adopt the irreducible minimum as stated above, we may fix a rate in the case of the 2nd respondent's manifestoes at Rs. 7-8-0 per 1000. Admittedly, 20,000 were printed though the petitioner maintained that twice that number was printed. The cost of 20,000 manifestoes would be Rs. 150.

44. Coming to the electoral rolls, the official copy for the city and the mufassal is Ex. A-33, consisting of 596 pages. The 2nd respondent purchased one such copy on 8th December, 1953, for Rs. 24-2-0 and the 1st respondent also purchased at the same rate. Ex. A-14 contains 153, pages but it relates only to Madras city. Ex. A-25, relates to the districts of Tanjore, Coimbatore, Tiruchirapalli, Tirunelveli and a part of South Arcot. The portion relating to the other districts are not found in it but three sheets, 149, to 151, relating to Madras city, got mixed up with them. In these rolls, the reprinting is done on only one side of the paper though in double line. The petitioner contends that the number of pages in the reprinted electoral roll must be much larger than in the official roll. Next, we have to estimate the cost of re-printing. If we adopt the official rate, the cost of the 200 copies, acting on the smaller number reprinted according to R.W. 7, will exceed Rs. 5000. As when such a large number is required the official copies will not be purchased but reprinting will be resorted to for cheapness, we may estimate the cost of such reprinting. The petitioner examined P.Ws. 13 and 16. P.W. 13 is the Manager of the Giri Press. In reply to a query by one Mr. K. V. Sankaran, he quoted a rate of Rs. 6, per page as per specimen for setting and striking alone, paper charges being extra. He sees Ex. A-25, and estimates the cost of printing per page (paper extra), at Rs. 8. In the cross-examination, it is elicited that lino-type printing is cheaper but he says it will be Rs. 5 per page even in that case (paper extra again). P.W. 16 is an assistant in the Associated Printers. In reply to an enquiry from the petitioner (Ex. A-31), he sent a reply Ex. A-31(a) and this gives rates much higher than those of P.W. 13. It is elicited from the witness that quality work which alone his firm does, demands quality payment. Fixing the cost of reprinting at the irreducible minimum of Re. 1 per page and limiting the number of pages to 596, the cost of paper, setting and printing the first copy must be Rs. 596. This is a very low estimate and we have adopted it as the one most favourable to the 2nd respondent. The cost of each subsequent copy may be put at Rs. 10. The cost of printing 200 copies would, according to this method, come to Rs. 2586, that is, about half the total cost of he same number of official copies. The total expenditure shown by the 2nd respondent is Rs. 2424-1-0. The difference between this amount and the prescribed maximum of Rs. 3000 is Rs. 575-15-0 and that is less than the reprinting of even one copy of the electoral roll. It must be for this reason that he should have dropped the original statement of reprinting free of cost and taken up the loan theory in the evidence. In any event, the total cost of Rs. 393 on the other three items discussed above and the cost of this reprinting when added to the amount already shown will exceed the prescribed maximum not by any small amount but by a very considerable one. The 2nd respondent deposes that he did not consult any lawyer before filing his return, that he gave it to the Returning

Officer and asked him to check it up and that he told him it was all right. This would not help him; for, under the Indian Law, exceeding the limit of maximum election expenses is a corrupt practice *per se* and the question of *bona fides* or knowledge of the candidate does not arise (vide *Munusami Gownden v. Khader Sheriff*, 4 E.L.R. 283). It follows that the 2nd respondent comes within the mischief of Section 123(7), and we find the issue accordingly.

45. In para. 35, above, it was held that the cost of preparing blocks by M/S. Klein & Peyerl, for the enclosures to the 1st respondent's manifestoes (Exs. A-2 series) will be election expense and has to be shown in his return (Ex. A-15), both under receipts and expenditure and that even if such cost be included, his total expenditure would not exceed the prescribed maximum of Rs. 3,000. The question now for consideration is whether the omission by itself attracts Section 124(4), of the Act. That section reads as follows:—

> "The following shall also be deemed to be corrupt practices for the purposes of this Act—
>
> (4) The making of any return of election expenses which is false in any material particular, or the making of a declaration verifying any such return".

The expression "false" necessarily implies corrupt motive and deliberate omission. In *Abdul Wali Khan & Habib-Ur Rahman* v. *MR Ehtisham Mahmood Ali* (Doabia's Indian Election Cases, Vol. I, page 149) it was held that, when the prescribed maximum limit is much higher than the expenses returned by a candidate, he could not be said to have any corrupt motive in concealing a petty amount. In the case of the 1st respondent, the maximum is much higher than the expenses actually returned and the amount omitted is petty. We are therefore disposed to think that it cannot be a case of corrupt motive deliberate omission. Coming to the 2nd respondent, the amount involved are really material, but it cannot be said that there is a corrupt motive or deliberate omission, because he admitted in his return (Ex. A-16), the items of expenditure though he did not include them in his total expenditure on the ground that they were free of cost. The omission of entries in the receipts column in the case of both the respondents is as already stated, only an irregularity or a defect but not anything corrupt. It follows that neither of the respondents 1 and 2 can be charged under Section 124(4), and that is our finding.

46. *Issue* 8.—Paragraph 12 of the election petition states that the 1st respondent is guilty of the illegal practice mentioned in Section 125(3), of the Act and that its particulars are given in Schedule D. The said particulars are these. The 1st respondent got printed and circulated circular having reference to his election. The first circular contains five sheets dated 30th September, 1953, 13th September, 1953, 24th September, 1953, 22nd September, 1953, and 30th October, 1953, being printed letters with facsimiles of signatures of the 1st respondent and his other supporters and an explanatory note furnishing relevant information regarding his candidature. All the five sheets do not bear on their face the name and address of the printer and were sent to the electors by post. The second circular was undated and read as follows:

> "V. K. John, B.A., B.L. LL.D. (Lond.) Barrister-at-law, M.L.C.
>
> Deputy Leader of the Opposition in the Legislative Council, Madras.
>
> Regarding my candidature For Election to the Legislative Council, Madras From the Graduates' Constituency.
>
> The said circular did not contain the name and address of the Printer".

47. Paragraph 28, of the written statement of the 1st respondent states (1) that all the documents in Schedule D, except the last one are letters and the last one is a visiting card and that they are not circulars within the meaning of the section (2), that Section 125(3), only aims at documents which are anonymous or of doubtful authority, that these are not of that kind and that the names and addresses of both the printer and publisher are not necessary and (3) that, even if it is assumed to be a technical breach of the Act, it is a trivial matter. In I.A. No. 13, of 1954, the petitioner required the 1st respondent to admit that his election manifestoes were sent without the name and address of the printer (item 8) in the list of facts and that they were all pinned together (item 9). Also, he required him to admit these manifestoes (serial Nos. 1 to 11 in this petition). In para. [illegible] of his counter affidavit to that petition, the 1st respondent states [illegible] in item No. 8, was admitted in his written statement and that [illegible] petitioner wants a second admission. The 1st respondent admits

also in his evidence that all the manifestoes printed and sent do not bear the name and address of the printer (page 42, 1st para. of the typed memorandum of evidence).

48. Eight sets of the first kind (received from the 1st respondent by different voters) are Exs. A-2 series and the sheets of each are bostitched together. No set of the second kind is filed and marked, but by reason of the admissions by the 1st respondent, their form and text may be taken to be the one given in Schedule D. The printer's bill (voucher No. 14) enclosed in the 1st respondent's return of election expenses (Ex. A-15) shows the total number was (2,000 + 1,000) 3,000

49. The question is whether the issuing of both or either of the above two kinds of manifestoes by the 1st respondent amounts to an illegal practice under Section 125(3), of the Act. Section 125(3), runs thus:—

> "The following shall be deemed to be illegal practices for the purposes of this Act:—
>
> (3) The issuing of any circular, placard, or poster having a reference to the election which does not bear on its face the name and address of the printer and publisher thereof".

According to the petitioner, the two kinds of manifestoes are "circulars" and as the 1st respondent has admitted his issuing them without the name and address of the printer and publisher on their face, he is clearly guilty under the section. To this, the answer of the 1st respondent is three fold: (1) that they are not "circulars" but only letters and visting cards; (2) that the conjunction "and" between the words "printer" and "publisher" in the section should be read as "or" and that, as all these documents bear on their face the name and address of the 1st respondent who is the publisher, all the requirements of the section are satisfied and there is no illegal practice; and (3) that, even if otherwise, it is only a technical breach of law and a trivial matter.

50. The first point then is whether they are "circulars". According to the Oxford English Dictionary, circular is "a letter to many in identical text". The Concise Oxford Dictionary gives it as "adj: addressed to a circle of friends, and n: circular letter or circular as notice, advertisement etc. reproduced for distribution". Chambers gives it as "adj: addressed to a circle of friends and n: an intimation sent to a number of persons". Children's Dictionary gives it as "adj. addressed in the same terms to a number of people and n. notice copied and sent to a number of people". Webster's International Dictionary gives it as "addressed to, affecting, or pertaining to, a circle or to a number of persons having a common interest; intended for circulation". In particular, we may notice that the Concise Oxford Dictionary treats a circular letter and a circular as the same while the Oxford Dictionary describes even a letter with identical text addressed to a number of people as a circular The essential features then of a circular are (1) identity of text and (2) circulation or distribution to a body of persons. On the other hand, a letter, according to the Oxford Dictionary, is a missive or an epistle. In fact, its features appear to be the very opposite to those of a circular; for, in the nature of things a letter is a personal communication addressed to a single individual and the text should be necessarily peculiar or relating to him alone. In other words, there can be no question at all of identity of text and circulation or distribution in the case of a letter In the course of arguments, a doubt was raised (not on any authority) whether, to describe as a circular, one and the same document should go to every person and return to its starting point after circulation. This is opposed to the dictionary meanings given above, which speak of "identity of text", "addressed to a number of persons", "reproduced for distribution" and "copied and sent to a number of people". Further, that cannot be the meaning or requirement for still another reason. In this Graduates' Constituency, the number of voters is about 25,000. In other constituencies, it will be several times this number, because of the adult suffrage in our country. Could it be said that one and the same document should go from voter to voter in succession and finally return to the issuer for it to be described as a circular? Obviously not. That may be one mode of circulation and may be resorted to where the number of persons is small and their body compact. Distribution severally of a document with identical text is equally circulation and the document so circulated will be a circular. In fact, that is the expression used in regard to documents with identical text issued by a superior office or officer to a subordinate office or officers. Hence there is no room for the doubt and it is groundless Now, let us examine Exs. A-2, series Exs A-2, A-2(a), A-2(c) and A-2(f) come under one class Each of them contains five sheets. The first is in the form of a letter by the 1st respondent to the voters informing them of his qualifications and past record and promising future good

work if returned. The second is a letter by Dr. A. L. Mudaliar, to the 1st respondent knowing that he is seeking election and wishing him every success. The third is again a letter to the 1st respondent by Mr. K. Bhashyam, Ex. M.L.A. expressing his gladness to hear that the 1st respondent has decided to stand for election and hoping there will be no opposition to it. The fourth is again a letter but addressed to the voters by six supporters of the 1st respondent recommending his candidature and requesting the voters to give him their first vote. The last is described as explanatory notes furnishing relevant information about the 1st respondent's candidature. It is printed on his letter-head but does not bear his signature. The remaining four [Exs. A-2(b), A-2(d), A-2(c) and A-2(g)] are the same as the above except that they do not contain the explanatory note. Coming to the second variety mentioned in Schedule D, their form and text should be taken to be the one given therein, as mentioned above. The 1st respondent says that they are visiting cards, but there is this fact that they refer to his candidature in this election and some facts in support of it. This goes much beyond the purpose of a visiting card which is only to announce the visitor. It cannot be said that one is not altogether justified if he describes this variety as a brief manifesto. Incidentally, it may be noticed that the 1st respondent deposes that he did not visit any voter. This can have no bearing on the true nature of the document and is referred to only to show that his description does not appear to be tenable. At one stage of the arguments, it was questioned, what would be the conclusion if the copies are not printed but are reproduced other. wise? The answer to this is found in Parker's Election Agent & Returning Officer at page 83, where it is pointed out that any process for multiplying copies of a document, other than copying it by hand, is deemed to be printing. At pages 84 and 85, it is pointed out that anything which is in the nature of an appeal to a voter to vote for a particular candidate would probably be held to be an address or a notice within the English Statute. Indian Election Law by Sarin and Pandit, at page 500, says that "issuing of printed post cards to the voters soliciting votes or publication of leaflets, not bearing on their face the name of the printer and publisher, amounts to an illegal practice". Here, we are concerned only with the first part of the extract. These extracts also support the petitioner's contention. The conclusion should be and is that the two varieties in Schedule D are circulars within the meaning of the Act.

51. The next point is whether it is sufficient if the documents bear on their face the name and address of the publisher alone but not of the printer. The section mentions the conjunction "and" between the words "printer" and "publisher" and the petitioner's contention is that its plain meaning and requirement is that both are mandatory. On the other hand, the 1st respondent urges that sometimes the conjunction "and" in statutes is understood as "or" and relies on *L.H. Sugar Factory* v. *Moti* (A.I.R. 1941 All. 243, F.B.). There the question arose in relation to Section 40 of the U.P. Agriculturists Relief Act, (XXVII of 1934), which also contains the conjunction "and". Regarding the general principle of interpretation of statutes, the Full Bench was unanimous and quoted the observations in Maxwell on the Interpretation of Statutes, Edition 7, at pages 205 and 206:

> "To carry out the intention of the Legislature, it is occasionally found necessary to read the conjunctions "or" and "and" one for the other".

The Chief Justice stated the principle thus at page 249:

> "It is however to be noted in this connexion that it is the duty of a Court of Law to primarily adhere to the strict literal interpretation of the words used, and the substitution of conjunctions should not be made without sufficient reason. But if such adherence is destructive of the object of the enactment and leads to anomalies and absurdities, it is fair to assume that the Legislature did not use the words in that sense and in such a case the conversion of "and" into the disjunctive "or" is permissible. In other words, when the phraseology of an enactment is capable of one and only one interpretation it is not open to the Courts to give a go-by to that interpretation simply with a view to carry out the supposed intention of the Legislature. But if the phraseology used is capable of two interpretations that interpretation which is consistent with the object of the enactment is to be preferred to the interpretation that would nullify that object."

In applying this principle to that Act however, four of the five Judges declined to read "and" as "or", holding that the plain and simple meaning derivable from the letter should not be lightly departed from speculating upon the intention

or the spirit of the statute. The question is whether, in the case before us, there is anything to override the plain text of the section. The 1st respondent is unable to show anything but however urges that the section only aims at documents which are anonymous or of doubtful authority and that, where from the name and address of the publisher their true origin can be traced, the name and address of the printer are unnecessary and relies on *Cockermouth Division Case* (5 O'M. & H. 155). The petitioner contends that it may be one of the purposes but that it is not limited to it alone. Next, the 1st respondent relies on *K. Parthasarathi* v. *Elaya Pillai* (4 E.L.R. 188). Here, one of the notices issued on behalf of the candidate showed that it was printed by the Royal Press, Athoor, under a specified order. It did not contain the name of the candidate or of anyone else as publisher, but the candidate admitted having issued it, and he also included the charges of printing in his election expenses. The Election Tribunal held that the printer himself may be presumed to be the publisher. Where by trade-custom the printer and publisher are the same, such presumptions are drawn. But the very fact that a presumption has to be drawn goes against the 1st respondent's contention; for, according to him, the name and address of either the printer or the publisher is sufficient and if that be correct, there would be no need to presume at all. The necessity for the presumption implies that both are mandatory. The petitioner points out that this very same contention now raised by the 1st respondent was raised and rejected in *Krishnaji Bhim Row* v. *Sankar Santharam* (7 E.L.R. 100) and it is so. Also he relies on *Lachiram* v. *Jamunaprasad Mukharaiya & others* (Gazette of India dated 11th January 1954, page 53 at 64). There, as in this case, the publication was admitted and the leaflet and poster did not have the name of the printer on them. The Tribunal held that it amounted to an illegal practice. The matter went up before the Supreme Court in *Jamunaprasad* v. *Lachhi Ram* (A.I.R. 1954 S.C. 686) and the correctness of this view was not disputed. Lastly, the petitioner points out that the judgment of the High Court in W.P. Nos. 476, 478, and 479, of 1955 in these very proceedings clearly lays down that the names and addresses of both the printer and publisher are obligatory. The following observation at page 24 is material:

> "How the omission of the name of the printer or publisher in a circular or placard or poster cannot possibly have any effect on the result of an election. None-the-less, it is an illegal practice and under Section 99 of the Act, the Tribunal is required to give a finding on the matter if such a practice is alleged."

In our opinion, the question is concluded by authority against the 1st respondent. The conclusion then must be and is that the name and address of both the printer and publisher must appear on the face of the documents.

52. In support of the third point, the 1st respondent relies on the observations of Mr. Justice Darling in the *Cockermouth Division Case* (5 O'M. & H. 155 at 156). The observations in the High Court's judgment in the writ petitions extracted above are contra. Moreover as pointed out in *Munusami Gownder* v. *Khader Sheriff* (4 E.L.R. 283 at 288 in respect of another aspect of the election law), the rules appear to be less stringent in England than in India. Further, the section does not warrant the view. In conclusion, the admitted issue of the two varieties of documents by the 1st respondent without the name and address of the printer amounts to an illegal practice under the section and the issue is found accordingly.

53. *Issue* 8(*a*).—In para. 9 of the petition, the petitioner charges the 1st respondent with this corrupt practice. That para. states that he was actively helped by persons employed in the postal service in diverse ways (a) by furnishing previous information regarding deliveries of ballot papers particulars of which are given in Sch. B-1 (b) by withholding delivery of ballot papers to persons who would vote for the petitioner, particulars of which are given in Sch. B-2 and (c) by withholding delivery of parcels containing ballot papers addressed to the petitioner and to persons interested in him, particulars of which are given in Sch. B-3. In para. 10, it is stated that the petitioner understands that in several places in the city the agents of the respondents followed the postmen with a view to take the ballot papers from the voters immediately on delivery and that this practice has an element of undue influence in it inasmuch as it leaves the voter little time to make up his mind. Particulars are given in Sch. B.4. In paragraphs 19 to 22 of his written statement, the 1st respondent complains that the particulars are not full and clear and denies all the allegations actually made. In para. 14 of his written statement, the 2nd respondent mentions that the allegations relate only to the 1st respondent but still craves leave to adopt his answer as part of his own written statement.

54. Turning to the particulars, the first item is that the 1st respondent dropped M/S. P. S. Sundaram and K. Kuppuswami at the G.P.O. Madras at about 3 or 3-30 P.M. on 26th March, 1954. The evidence in regard to it is only that of P.W. 14 (C. Kothandam). He is an advocate and a junior in M/S. Row & Reddi. His cross-examination is directed to show that he did not know M/S. Sundaram and Kuppuswami. The 1st respondent denies it in his evidence. By itself the incident amounts to nothing. The second item is that the said persons were copying addresses from ballot covers in long green note books and that the petitioner saw it. In respect of it, the evidence is only that of P.W. 17. In his cross-examination, it is elicited that he did not know whether the postman was taking the papers for delivery or was returning them after non-delivery. As it is unlikely that the postman, even if he were agreeable to oblige, would in fact do so inside the G.P.O., it is possible the petitioner mistook what actually happened.

55. In Sch. B-8 the names of six addressees who received the ballot papers only after personal representation are mentioned but none of them is examined. Even the allegation does not amount to any assistance obtained by or rendered to the 1st respondent. Next, two instances where ballot papers were not delivered at all are mentioned and they are also not examined. The next item relates to ballot papers not delivered in spite of written instructions to the Post Office and five persons are mentioned. One of them is P.W. 9 (Mr. V. P. Gopala Nambiar) and in the very beginning of his cross-examination, he admits that he did not give any written instructions to the Post Office. He changed his address more than once and still got his other letters Exs. A-26 series by his oral re-direction through the landlords of his previous leaseholds and the postman himself. If the postman delivered other letters without written redirection, it means he was friendly and would not have withheld the ballot paper. The petitioner himself admits that nearly 2000 or 3000 post cards were returned to him as undelivered because of changes in addresses or deaths or moving of the addressees to other places and adds that he has no complaint to make against the Post Office. This may be one such case. The next item is that a ballot paper redirected by P.W. 2 to his brother in Palghat and handed over to a postman was found with the postman a week thereafter. P.W. 2 says that he saw the cover with the postman among the letters brought for delivery and he may have made a mistake. Further, there was no complaint by him nor did he even find out from his brother whether after all he received it. The last item in this schedule is that the petitioner's own ballot paper was not delivered to him till 27th March, 1954 and that it was actually delivered after his personal complaint to the Assistant Presidency Postmaster on 26th March 1954. In this case also, there was a change of address and the delay may be due to it. Turning to Sch. B-3, the first item is that a parcel containing ballot papers addressed to the petitioner was not delivered to him on 3rd April, 1954 despite his personal call. It was delivered actually on 5th April, 1954 after he was identified by one Sri K. S. Hegde. That may be because of the stringency of postal rules. The next item is that a parcel containing ballot papers addressed to P.W. 10 and sent from Madura on 3rd April, 1954 was not delivered till 10th April, 1954 *i.e.* two days after the poll. It was brought without the postal seal and on P.W. 10's protest, the date seal was put and delivered on that day. P.W. 10 also gave a complaint [*vide* Ex. A-20(c)]. In the cross-examination of P.W. 10, it is elicited that he cannot say whether the delay was in Madras or Madura. The incident is then of no help to the petitioner. The only item in Sch. B(4) is that the first to contact the voters were always the 1st respondent's agents. Assuming it is so, it only shows their alterness and nothing more. P.W. 7 speaks of this circumstance in Pila-tope, but his evidence does not show that the 1st respondent's agents had anything to do with the postman. All that is said is that the usual time of delivery is the forenoon and that the delivery, he and P.W. 17 saw, was late in the evening. At the same time, it is admitted that late deliveries are occasioned by several causes and nothing improper can be inferred from this alleged late delivery either.

56. In conclusion, we are of the opinion that no case is made out in respect of this charge and hence our finding is in the negative against the petitioner.

57. *Issue 12.*—From our finding on issue 5 it follows that the petitioner is not entitled to the relief he sought in paragraph 18(a) of the petition. Hence his petition in respect of this relief is dismissed under Sec. 98(a) of the Act.

58. Under Sec. 99 of the Act, we make the following Order:—

(a) From our finding on Issue 8 it follows that the 1st respondent has committed an illegal practice under Sec. 125(3) of the Act entailing the consequential statutory disqualifications and we record a finding to that effect;

(b) From our finding on issue 7, it follows that the 2nd respondent has committed a major corrupt practice under Sec. 123(7) of the Act entailing the consequential statutory disqualifications and we record a finding to that effect;

(c) We do not find sufficient material or grounds to record any other finding against any person under any other count.

59. Under Sec. 99(1)(b) of the Act, we make the following order as to costs. In respect of the dismissal of the petition under Sec. 98(a) of the Act mentioned in para. 57 the petitioner shall pay to each of the respondents 1 and 2 Rs. 500/-. In respect of the findings recorded in para. 58(a) and (b) the 1st respondent shall pay to petitioner Rs. 250/- and the 2nd respondent shall pay to petitioner Rs. 250/-. The 3rd respondent will bear his own costs.

Pronounced in Open Court this 16th day of April 1956.

(Sd.) M. KANNU BABU,
Judicial Member.

(Sd.) A. BHUJANGA RAO,
Advocate Member.

(Sd.) N. KRISHNASWAMI,
Chairman.

[No. 82/28/54/6552]

BY ORDER
P. S. SUBRAMANIAN, Secy.

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